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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 86

GEORGE WILLIAM DODEZ, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 12, 1946.

CERTIORARI GRANTED MAY 6, 1946.

INDEX

	Page
Caption	1
Indictment, Filed June 12, 1944	2
Order of Arraignment, Entered June 19, 1944	3
Plea of "Not Guilty" withdrawn by leave of Court	3
Motion to Quash Indictment, Filed Dec. 7, 1944	3
Motion of Defendant to Dismiss, Filed Dec. 8, 1944	5
Motion for Directed Verdict, Filed December 8, 1944	8

BILL OF EXCEPTIONS

(Filed March 27, 1945)

Trial Had December 7, 1945

Government's Opening Statement to Jury	11
Defendant's Opening Statement to Jury	11

PLAINTIFF'S TESTIMONY

	Direct	Cross
Edna McAfee	13	15

DEFENDANT'S TESTIMONY

	Direct	Cross	Redirect	Re-Cross
Edna McAfee	16			
Mabel Sauer	21	25		
George William Dodez	26	52	57 62	61
Renewal of Motion to Dismiss, presented December 11, 1944				65
Renewal of Motion for Directed Verdict, presented December 11, 1944				65
Defendant's Requested Special Instructions 1 to 48				66
Argument of Government to Jury				100
Argument of Defendant to Jury				102
Charge of Court to Jury				104
Defendant's Exceptions to Court's Charge				109
Verdict of Jury, Filed December 11, 1944				127
Renewal of Motion to Dismiss, typewritten form				128

Judgment and Commitment 130
Notice of Appeal, Filed December 15, 1944 132
Order of Instructions for Preparation of Record, Filed January 4, 1945 133
Stipulation for Filing Bill of Exceptions, Filed January 10, 1945 134
Order Extending Time to File Bill of Exceptions, Filed January 10, 1945 134
Assignment of Errors, Filed March 26, 1945 135
Designation of Contents of Record, Filed March 26, 1945 143

PLAINTIFF'S EXHIBITS

Gov'ts. Ex. 1, Selective Service Questionnaire 146
Gov'ts. Ex. 2, Form for Conscientious Objector 150
Gov'ts. Ex. 3, Order to Report 155

DEFENDANT'S EXHIBITS

Def. Ex. A (1), Registration Card 156
Def. Ex. A (2), Certificate of Duly Ordained Minister 157
Def. Ex. A (3), Ordination Card 158
Def. Ex. A (4), Affidavit of R. A. Smith 159
Def. Ex. A (5), Affidavit of George H. Goulin 160
Def. Ex. A (6), Affidavit of George William Dodez 160
Def. Ex. A (7), Affidavit of Andrew Gerber 163
Def. Ex. A (8), Letter of Hayden C. Covington 164
Def. Ex. A (9), Application of Watchtower Society 164
Def. Ex. A (10), Letter of George William Dodez of Nov. 27, 1942 165
Def. Ex. A (11), Letter of John J. Nolan of November 30, 1942 166
Def. Ex. A (12), Letter of Nolan to Dodez of December 2, 1942 167
Def. Ex. A (13), Letter of Dodez to Local Board of December 3, 1942 167
Def. Ex. A (14), Statement of Ministry by 44 Signers. 168
Def. Ex. A (15), Letter of Local Board to Dodez of December 8, 1942 169
Def. Ex. A (16), Notice of Appeal of Dodez 170
Def. Ex. A (17), Notice of Appointment of Presiding Minister 172

Def. Ex. A (18), Letter and Notice to Local Board of March 16, 1943 173
Def. Ex. A (21), Affidavit of 66 Members of Congregation 174
Def. Ex. A (22), Minister's License for State of Ohio 176
Def. Ex. A (19), Photograph of Exterior of Church Building 177
Def. Ex. A (20), Photograph of Interior of Church Building 178
Def. Ex. A (23), Letter Requesting Reopening of Case 179
Def. Ex. A (24), Letter of Dodez to Appeal Agent, June 16, 1943 180
Def. Ex. A (25), Order to Report for Preinduction Physical Examination 182
Def. Ex. A (26), Letter of Local Board to District Attorney, February 22, 1944 184
Def. Ex. A (27), Certificate of Fitness 184
Def. Ex. A (28), Report of Physical Examination 185
Def. Ex. A (29), Letter of Dodez to Draft Board, April 19, 1944 186
Certificate of Clerk of District Court 188

PROCEEDINGS IN UNITED STATES CIRCUIT COURT OF APPEALS—SIXTH CIRCUIT

Page
Judgment 189
Opinion 189
Docket Entries 200
Praecipe for Certified Transcript of Record including Proceedings of the United States Circuit Court upon Petition for Writ of Certiorari 201
Motion for Stay of Mandant 203
Clerk's Certificate 206
Order allowing certiorari 206

CAPTION

THE UNITED STATES OF AMERICA
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION, ss:

At a stated term of the District Court of the United States within and for the Northern District of Ohio begun and held at the City of Cleveland, in said district, on the first Tuesday in April being to the 4th day of said month in the year of our Lord one thousand nine hundred and forty-four and in the one hundred and sixty eighth year of the Independence of the United States of America. Among the proceedings then and there had were the following, to-wit:

Present: The Honorable E. B. Freed,
United States District Judge.

THE UNITED STATES OF AMERICA,

vs.

GEORGE WILLIAM DODEZ
No. 18256 CRIMINAL

Be It Remembered, That heretofore, to-wit, on the 29th day of May, A. D. 1944, came a Grand Jury of the United States, to-wit: A. J. Leighton, C. E. Fadely, Earl J. Barrett, Marietta V. Hookway, Fred Alpeter, Helen F. Jaggers, Florence A. Kovanda, Fay Coben, C. A. Horn, Mrs. Theresa Istok, Henrietta Leddon, Ethel May Holmes, Mrs. Myrtle Dederich, Marian C. Deibel, Mary Walker, Samuel S. Domer, Luch Gregory, Hattie Heakin, John Fred Below, Ella M. Newcomer, Mrs. Ida Blizzard, and Bert Vader, which said Grand Jury returned an Indictment endorsed "A true bill, Clyde W. Goodrich, Foreman of Grand Jury," which said Indictment is in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA
(Filed June 12, 1944)

Secs. 305, 311,
T. 50, App.
U. S. C.

IN THE DISTRICT COURT OF THE UNITED STATES, within and for the Division and District aforesaid.

At the April Term of said Court, in the year of our Lord One Thousand Nine Hundred and Forty-four.

The Grand Jurors of the United States of America, duly impanelled, sworn and charged to inquire of crimes and offenses within and for the body of the Eastern Division of the Northern District of Ohio, upon their oaths present and find that:

1. That at all times herein mentioned George William Dodez was a male citizen of the United States, being between the ages of eighteen and forty-five, inclusive, and a person charged with the duty of carrying out the provisions of the Selective Training and Service Act of 1940, and as amended, and the Rules and Regulations issued pursuant thereto.

2. That the said George William Dodez registered on June 30, 1942, under the provisions of the said Selective Training and Service Act of 1940, and as amended, and the Rules and Regulations issued pursuant thereto, at Orrville, County of Wayne, State of Ohio, within the jurisdiction of this Court, under the jurisdiction of Selectve Service Board No. 2 of said County.

3. That the said George William Dodez made a claim for exemption from combatant training and service in the land or naval forces of the United States by reason of religious training and belief, which claim was sustained by the said Board.

4. That the said George William Dodez was subsequently classified in Class IV-E as a conscientious objector, and was assigned to work of national importance under civilian direction by the Director of Selective Service pursuant to the Rules and Regulations under the said Act.

5. That the said George William Dodez was ordered on or about April 8, 1944, by the aforesaid Board to report on April 21, 1944 for work of national importance.

And the Grand Jurors aforesaid, upon their oaths afore-

said, do further present and find that

GEORGE WILLIAM DODEZ

defendant herein, on April 21, 1944, in the City of Orrville, County of Wayne, State of Ohio, within the jurisdiction of this Court, did knowingly, wilfully, unlawfully and feloniously, fail to perform such duty required of him; that is to say, that the said defendant, did fail to report for work of national importance as ordered by said Board; contrary to the provisions of the Selective Training and Service Act, and as amended, and the Rules and Regulations issued pursuant thereto, and against the peace and dignity of the United States.

DON C. MILLER,
United States Attorney.

ORDER OF ARRAIGNMENT
(Entered June 19, 1944, Freed, J.)

Defendant appeared, was arraigned and entered a plea of not guilty. Bond continued.

PLEA OF NOT GUILTY WITHDRAWN BY LEAVE OF COURT; MOTION OF DEFENDANT TO QUASH TAKEN UNDER ADVISEMENT
(Entered December 7, 1944, E. B. Freed, J.)

Defendant appeared with his attorney and by leave of court withdrew a plea of not guilty and, the defendant having filed a motion to quash, said motion was argued by the attorneys and taken under advisement by the court.

MOTION TO QUASH THE INDICTMENT
(Filed December 7, 1944)

Now comes the defendant and moves the court to quash the indictment and to order the prosecution dismissed because:

The criminal sanctions clause of Sec. 11 of the Act and the Regulations thereunder have been construed by the courts so as to require the defendant to first report for induction as a condition precedent to testing the invalidity of the order to report for induction upon which the indictment is based, and so as to penalize the defendant for having failed to report for induction by denying him the right to show that the order is invalid, because the defendant's exemption from duty under the Act as a minister of religion, thus making said Act and the Regulations thereunder unconstitutional and void for each of the following reasons, to wit:

(1) They constitute a bill of attainder, contrary to Clause 3 in Section 9 of Article 1 of the Constitution of the United States.

(2) They transfer and surrender the judicial power of the United States courts in the trial of criminal cases from said courts to the draft boards so as to permit said board to determine the guilt of the defendant, a judicial function, contrary to Article III of the Constitution of the United States.

(3) They abridge the right of the defendant to have a judicial trial and deny him the right to prove his innocence and also his right to be heard in his defense, contrary to the due process clause of the Fifth Amendment to the United States Constitution.

(4) They deny and abridge the right of the defendant to a trial by jury and the privilege of having a jury pass on whether the defendant owes a duty because exempt and whether he is guilty of failing to perform a duty, contrary to the provisions of the Constitution of the United States guaranteeing a trial by jury and to the Sixth Amendment which forbids the denial thereof.

(5) They permit conviction without evidence or upon hearsay evidence and deny the defendant the right of counsel in his defense contrary to the Fifth and Sixth Amendments to the United States Constitution.

(6) They permit the draft boards to determine the guilt of the defendant, who is exempt and could not be found guilty of violating a duty under the Act, and thereby the

Act and Regulations are converted into an ex post facto law, contrary to Clause 3 in Section 9 of Article I of the United States Constitution.

WHEREFORE, the law as construed being unconstitutional and void, it will not support an indictment; accordingly the indictment should be quashed and dismissed with an order discharging the defendant from all liabilty. The defendant prays for such other and further relief to which he may be justly entitled in the premises.

VICTOR F. SCHMIDT,
8469 Pine Road,
Rossmoyne, Ohio,
Attorney for Defendant.

JURY IMPANELED AND SWORN; TRIAL BEGUN; MOTION OF DEFENDANT TO DISMISS, MOTION OF DEFENDANT FOR DIRECTED VERDICT MOTIONS OVERRULED; ADJOURNED UNTIL MONDAY MORNING

(Entered December 8, 1944, E. B. Freed, J.)

There being present the United States Attorney and the defendant with his attorney and the motion heretofore taken under advisement is overruled. Thereupon the defendant entered a plea of not guilty.

Whereupon came the following named persons as jurors, to-wit: Victoria Lisowski, Mrs. N. Ferron, Mrs. Hattie Myers, C. S. Kelser, Mrs. Delia Gallagher, Eileen C. Dewing, Isabella McGee, Clarence R. Reeves, Wm. Fred Heinemann, Ethel Fitch, George A. Ismert, Jr., and Mrs. Emma Brown, who were duly impaneled and sworn according to law and the trial proceeded.

Thereupon the jury heard the opening statements of attorneys and the evidence addnced on behalf of the United States. And the defendant filed a motion to dismiss and a motion for a directed verdict of judgment of acquittal. Whereupon the court overruled said motion to dismiss without argument and overruled the motion for a directed verdict without argument.

Thereupon the jury heard the evidence adduced on behalf of the defendant begun but not concluded and, the hour of adjournment having arrived, this court is adjourned until eleven o'clock next Monday morning.

MOTION TO DISMISS
(Filed December 8, 1944)

Comes now the defendant herein and at the close of the Government's case and before offering any evidence in his own behalf and moves the Court to dismiss the action and release the defendant because:

1. The evidence is insufficient to constitute a crime under the laws of the United States, and any further proceedings by this Court to deprive the defendant of his liberty and property would violate the due process and other rights guaranteed in a criminal action under Article Three of, and the Fifth and Sixth Amendments to the Constitution of the United States.

2. The Selective Training and Service Act of 1940 as amended, Title 50 U. S. C. A., Section 305 (d) exempts from service and training regular and duly ordained ministers of religion.

3. The local board, the appeal board and any other agencies of the Selective Service System were without jurisdiction in law to place the defendant in any other than Class IV-D when the undisputed facts show the defendant to be a minister at all times since his registration; and the draft boards have no authority or jurisdiction on the evidence in the registrant's file to make or unmake the ministerial status of the defendant.

4. The order to report by the local board is invalid for the local and appeal boards were without jurisdiction in law to take any steps to compel service and training from the defendant when the Selective Training and Service Act of 1940 as amended exempts the defendant.

The defendant reserves an exception to any adverse ruling on this motion to dismiss.

VICTOR F. SCHMIDT,
8469 Pine Road,
Rossmoyne, Ohio,
Attorney for Defendant.

See next page for authorities on this motion.

AUTHORITIES

Article Three of, and the Fifth and Sixth Amendments to Constitution of the United States.

Clause 3 in Section 9 of Article 1 of Constitution of United States.

Title 50 U. S. C. A. 305 (d).

Selective Service Regulations, Sections 601.5, 623.1 (c) and 622.44.

Wise v. Withers, 3 Cranch (U. S.) 329 (1806, Chief Justice Marshall).

Cummings v. Missouri, 4 Wall. (U. S.) 277.

Burfenning v. Chicago St. RR. Co., 163 U. S. 322, 323.

Morton v. Nebraska, 21 Wall. 660.

Ng Fung Ho. v. White, 259 U. S. 276.

Crowell v. Benson, 285 U. S. 22, 58.

Shields v. Utah-Idaho C. Ry., 305 U. S. 177, 184.

Bradstreet v. Neptune Insurance Co., 3 Sumn. (U. S.) 600.

Windsor v. McVeigh, 93 U. S. 274, 277 and 278.

Edwards v. United States, 312 U. S. 473, 482.

Kirby v. United States, 174, U. S. 47 (1899).

Dowdell v. United States, 221 U. S. 321 (1911).

Diaz v. United States, 223 U. S. 442.

California v. Latimer, 305 U. S. 255.

Wilson v. United States, 263 U. S. 570.

Davis v. United States, 160 U. S. 469.

McLean v. Jephson, 123 N. Y. 142, 25 N. E. 409.

Hagar v. Reclamation District, Ill. U. S. 701.

United States v. Murdock, 290 U. S. 389, 394-396.

United States v. Murdock, 284 U. S. 141.

Fire Department v. Gilmour, 149 N. Y. 453.

Wayne v. Thompson L. R. 15, Q. B. 342 (1885, leading English Case).

Board of Health v. Heiser, 37 N. Y. 661.

People v. Kaye, 212 N. Y. 407.

State v. Lamos, 26 Maine 258.

Spencer v. People, 69 Ill. 410.

State v. Weimer, 64 Iowa 243.

State v. Kirby, 120 Iowa 26.

Crane v. State, 5 Okla. Cr. 560.

Richter v. State, 16 Wyo. 437.

Stevens v. Casey, 228 Mass. 368, 117 N. E. 588.

People v. McCoy, 125 Illinois 289, 17 N. E. 786.

State v. Rachowski, 86 Conn. 677.

MOTION FOR DIRECTED VERDICT AND JUDGMENT OF ACQUITTAL

(Filed December 8, 1944)

Comes now the defendant herein and at the close of the Government's case and before offering any evidence in his own behalf and moves the Court for a directed verdict and judgment of acquittal for the following reasons:

1. The undisputed evidence shows that the defendant is not guilty as charged in the indictment, and any further proceedings by this Court to deprive the defendant of his liberty and property would violate the due process and other rights guaranteed in a criminal action under Article Three of and the Fifth and Sixth Amendments to the Constitution of the United States.

2. The defendant is protected from the alleged crime because the Selective Training and Service Act of 1940 as amended, Title 50 U. S. C. A., Section 305 (d) exempts from service and training regular and duly ordained ministers of religion.

3. The local board, the appeal board and any other agencies in the Selective Service System were without jurisdiction in law to place the defendant in any other than Class IV-D when the undisputed facts show the defendant to be a minister at all times since his registration under the Selective Service System; and no administrative agency of the Selective Service System had any authority to make or unmake the ministerial status of the defendant.

4. The order to report issued by the local board is invalid and void for the local and appeal boards were without jurisdiction in law to take any steps to compel service and training from the defendant when the Selective Training and Service Act of 1940 as amended exempts the defendant.

The defendant reserves an exception to any adverse ruling on this motion for a directed verdict.

VICTOR F. SCHMIDT,
8469 Pine Road,
Rossmoyne, Ohio,
Attorney for Defendant.

Same authorities as cited on the original motion to dismiss.

IN THE DISTRICT COURT OF THE
UNITED STATES
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

The United States of America,
Plaintiff,
vs.
George William Dodez,
Defendant.
CRIMINAL NO. 18256

DEFENDANT'S BILL OF EXCEPTIONS

BE IT REMEMBERED, on Thursday, December 7, 1944, this cause came on to be heard, in the South Court Room, before Hon. Emerich B. Freed, one of the judges of said court, and a jury of twelve.

Thereupon, on, to-wit, Thursday, the 7th day of December, 1944, the Defendant, by his counsel, temporarily withdrew his plea of not guilty and presented a motion to the Court to quash the indictment, the aforesaid plea of not guilty to be reinstated when the motion to quash the indictment was acted upon by the Court.

Thereupon argument was had upon the aforesaid motion, after which the case was adjourned until Friday, the 8th day of December, 1944, at 1:00 o'clock a. m.

Thereupon, the above-entitled cause came on for further hearing, pursuant to adjournment, on Friday, the 8th day of December, 1944, at 10:00 o'clock, a. m., and the following further proceedings were had as follows, to-wit:

THE COURT: Ladies and gentlemen of the Panel, as I stated to you yesterday, you have been summoned as jurors to hear a case in which the Defendant, George William Dodez, is charged with violation of the Draft Law. He is a resident of Orrville, Wayne County. Do any of you know anything about the facts involved in this charge?

MR. SCHMIDT: May the Court please:

Last evening the Defendant's attorney was arguing on the motion to quash, and the Defendant at this time submits the motion to quash the indictment without further argument, and asks the Court for a ruling on the same.

THE COURT: Well, I thought I had ruled on that, Mr. Schmidt. Does not the record show that before I called the jury that I ruled on that?

Well, the motion will be overruled. I had thought I had ruled on it before I called the jury.

MR. SCHMIDT: And may the record respectfully show an exception?

THE COURT: Yes.

MR. SCHMIDT: And at this time the Defendant, who had previously withdrawn the plea of not guilty, reasserts it at this time.

THE COURT: All right. The record may show that a motion to quash is made and overruled.

Will the Defendant stand up, please.

(The Defendant stands up.)

The Defendant is now standing before you. Do any of you know the Defendant, Dodez?

He is represented by Mr. Victor Schmidt. Do any of you know Mr. Victor Schmidt?

The Government is represented by Mr. Francis Feighan, Assistant United States District Attorney. Do any of you know Mr. Feighan?

Do any of you know any members of the United States Attorney's office?

The Defendant, Dodez, is a Jehovah's witness. Are any members of this prospective panel conscious of any feeling of prejudice against anyone who professes to be a Jehovah's witness?

Are any members of this panel on a Selective Service Board, or have members of their families serving on Selective Service Boards, or as clerks, or assistants at Selective Service Boards?

Is there any reason from anyone of you why you cannot sit as fair and impartial jurors in this case, and decide this case solely on the evidence and the law applicable to that evidence?

In each instance, I presume, from your silence, that your answers are in the negative.

Any further questions, Mr. Feighan?

MR. FEIGHAN: None, your Honor.

THE COURT: Any questions on behalf of the Defendant?

MR. SCHMIDT: I believe not, your Honor.

THE COURT: Challenges?

MR. FEIGHAN: No challenges.

MR. SCHMIDT: No challenges.

THE COURT: You may swear the jury.

(Thereupon, the jury having been duly examined, empanelled and sworn, the following further proceedings were had:)

MR. FEIGHAN: If the Court please, I ask leave to incorporate the indictment as a part of the Government's opening statement.

THE COURT: Leave will be granted.

(Whereupon an opening statement was made to the jury by the Government's counsel as follows:)

MR. FEIGHAN: Ladies and gentlemen of the jury:

The Defendant, as charged in this indictment, the Government will prove, by both oral and written evidence, that George William Dodez, registered under the Selective Training and Service Act of 1940. That after registering on June 30, 1942, he made a claim for exemption from combat training and service in the land and naval forces of the United States by reason of religious training and belief, and that this claim was sustained by the local board.

He was then classified in Class 4-E by the local board and assigned by the Director of Selective Service to do work of national importance. And on April 8, 1944, he was sent and ordered to report for work of national importance on April 21, 1944, this order having been sent him by the local board.

The Government will prove that the Defendant knowingly, willfully, unlawfully and feloniously failed to carry out the duty imposed upon him by the Selective Training and Service Act in that he failed to report for work of national importance as ordered by his local Selective Service Board.

(Thereupon an opening statement was made to the jury by counsel for the Defendant as follows:)

MR. SCHMIDT: May it please the honorable Court, Mr. District Attorney and members of the jury:

The Defendant in this case is charged, as alleged in the indictment, with failure to report for work of national importance under the Selective Training and Service Act of 1940.

It is charged in the indictment, in substance, that the Defendant in this case knowingly, willfully, unlawfully and feloniously failed to perform such duty.

By the evidence on the part of the Defendant, we hope to prove that he did not willfully disobey this order; that he did not unlawfully disobey this order; and that he did not feloniously disobey this order.

The evidence will show that the Defendant was duly registered, according to law; that he was classified with an initial classification, and, immediately, within the 10-day period, he asked for a personal hearing; that such was attempted to be had, and he was there for personal hearing.

Furthermore, an appeal was duly taken, and the Defendant, after the appeal and classification by the Appeal Board, had a desire to take further steps and appeal to the National Headquarters by means of a direct appeal to the Director of the Selective Service System, who acts for the President of the nation.

After having gone thus far, he was finally ordered to report for work of national importance.

Now, just before the order to report for work of national importance was issued, sometime prior to it, he was ordered to take a final type physical examination at the induction station here in Cleveland.

That the Defendant went to the induction station, and he took the final type physical examination, and was acceptable for general service.

And we hope to prove, to his favor, that the Defendant in this case exhausted all of his administrative remedies. We hope to prove that. Having done that, we hope, by evidence, to prove that he is a regular and duly ordained minister of religion, exempt under the Act.

Now, members of the jury, we ask that you pay careful consideration not only to one side of this case, give careful consideration to what the witnesses for the Government have to say, and also what the witnesses for the Defendant have to say and, at no time, while the witnesses are on the stand in behalf of the Government, we ask you not to reach any conclusion concerning the guilt or innocence of the Defendant during that time. Hold your decision in abeyance, please, until you have heard both sides in this controversy.

We ask you to be fair, and give due consideration to the evidence as it is presented to you.

PLAINTIFF'S CASE

Thereupon the Plaintiff, the United States, to maintain the issues on its part to be maintained, called as a witness one Edna McAfee, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF EDNA McAFEE

By Mr. Feighan:

Q. State your name, please.

A. Edna McAfee.

Q. And your occupation?

A. I am a clerk of Selective Service Board No. 2 in Orrville, Ohio.

Q. You have registered with your board, George William Dodez?

A. Yes.

Q. And when did he register with the Board?

A. On June 30, 1942.

Q. After he registered, did he return a questionnaire to the board? (To the Clerk): Mark these for identification.

A. Yes.

(Thereupon, the paper writings were marked for the purpose of identification Government's Exhibits 1, 2 and 3.)

Q. I hand you what has been marked for identification Government's Exhibit No. 1, and ask you to tell us what it is.

A. It is Selective Service Questionnaire, DSS Form 40 of George William Dodez.

Q. And when was that filed with the Board?

A. September 21, 1942.

Q. Did he state his date of birth in the questionnaire?

A. Yes.

Q. What date did he state as his birth?

A. September 9, 1922.

Q. Did he make any statement in there in regard to conscientious objection to participation in war?

A. Yes.

Q. Was he sent a special form for conscientious objectors when he returned his questionnaire?

A. Yes.

Q. I will hand you what has been marked for identification as Government's Exhibit No. 2, and ask you to tell us what that is?

A. It is a special form for conscientious objectors.

Q. And after the questionnaire and the special form for conscientious objectors were filed with the board, was he classified?

A. Yes.

Q. What was his final classification?

A. Class 4-E.

Q. And that is the classification given to a conscientious objector?

A. Yes.

Q. Was he then sent an order to report for work of national importance?

A. Yes.

Q. I hand you what has been identified as Government's Exhibit No. 3, and ask you to tell us what that is.

A. It is an order to report for work of national importance.

Q. And to whom was that sent?

A. George William Dodez.

Q. And on what date was that sent?

A. On April 8, 1944.

Q. And what date was he to report for work of national importance?

A. On the 21st day of April, 1944.

Q. Where was he to report?

THE COURT: On what date, please?

Q. The date, again, please?

A. 21st of April, 1944.

Q. Where was he to report?

A. At the local board.

Q. And were you at the local board on that date?

A. Yes.

Q. And did George William Dodez report?

A. No.

Q. Were you there the entire day?

A. Yes.

Q. Did he come there at any time on that day?

A. No.

Q. Had he notified the board in advance that he would not report?

A. Yes, I believe he did.

Q. He did notify you that he would not report?

A. I believe so.

Q. And he did not report on that day?

A. No.

MR. FEIGHAN: I wish to offer these Exhibits, Government's Exhibits Nos. 1, 2 and 3.

THE COURT: They may be received.

MR. SCHMIDT: No objection.

MR. FEIGHAN: That is all.

(Thereupon, the paper writings, previously marked for the purpose of identification Government's Exhibits Nos. 1, 2 and 3, attached hereto, were received in evidence, and made a part hereof, as if fully rewritten herein.)

CROSS-EXAMINATION OF EDNA McAFEE

By Mr. Schmidt:

Q. Now, Miss McAfee, you have the residue of the file of George William Dodez, the Defendant in this case?

A. Yes.

Q. And this residue contains all of the features in the file and all of the parts, papers and documents which were considered by the local board in the classification of George William Dodez, that is, aside from the ones which you have identified for the Government, and which have been accepted as evidence?

A. Yes.

Q. I will ask you, Miss McAfee, that you remain in the court room with the residue of the file. You will be used as one of our witnesses. Thank you. (Witness excused.)

MR. FEIGHAN: The Government rests, your Honor.

THEREUPON THE PLAINTIFF RESTED

DEFENDANT'S MOTION

MR. SCHMIDT: At this time, let the record show that the Defendant presents a motion to dismiss, and also a motion for directed verdict and judgment of acquittal. (Hands documents to Court and counsel.)

THE COURT: The motion to dismiss is overruled. The motion for directed verdict and judgment of acquittal is overruled.

MR. SCHMIDT: May the record respectfully show an exception to the ruling of the Court?

THE COURT: I think that the motions themselves recite exceptions.

MR. SCHMIDT: Yes.

THE COURT: The record, of course, if you wish, may show it in addition.

MR. SCHMIDT: Yes.

DEFENDANT'S CASE

Thereupon, the Defendant, George William Dodez, to maintain the issues on his part to be maintained, called as a witness one EDNA McAFEE, who, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF EDNA McAFEE

By Mr. Schmidt:

Q. Your name, again?

A. Edna McAfee.

Q. And you are the same witness who occupied the witness stand in behalf of the Government at the outset of this action?

A. Yes.

Q. Miss McAfee, have you the residue of this Defendant's file with you? That is, aside from those Exhibits which were identified in behalf of the Government and admitted in evidence here?

A. Yes.

Q. May I see this, please? (Examines documents.)

MR. SCHMIDT: I will kindly ask that this be marked for identification as Defendant's Exhibit A.

(Thereupon, the said file was marked for the purpose of identification Defendant's Exhibit A.)

Q. Now, Miss McAfee, what is this?

A. It is a file on George William Dodez.

Q. And it is the complete residue of the file in this case aside from those Exhibits identified in behalf of the Government and admitted as a part of the Government's evidence here?

A. Yes.

Q. Does this contain, with the Government's Exhibits, the complete list of documents, papers, letters and other matters that were considered by the local board, and the other agencies of the Selective Service System in the classification of George William Dodez?

A. Yes.

MR. SCHMIDT: I will, ask, if your Honor please, that this be admitted in evidence; that is, that this Exhibit Defendant's exhibit A, may be admitted as a part of the Defendant's evidence.

THE COURT: It will be received.

(Thereupon, the said file, previously marked for the purpose of identification Defendant's Exhibit No. A, attached hereto, was received in evidence, and made a part hereof as if fully rewritten herein.)

MR. SCHMIDT: If the court please, may I read a portion from the Selective Service Questionnaire, which has been admitted in evidence by the Government?

THE COURT: Yes.

MR. SCHMIDT: Members of the jury: (Reading)

"Series 4: Present occupation or activity:

"(1) I am now working in the job described under No. (2) below.

"(2) The job I am now working at is: (Give full title. For example: Construction draftsman, turret lathe operator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage-license clerk, etc,): Ordained minister of the Gospel.

"I do the following kind of work in my present job: Perform missionary and evangelistic service in organized and ~~pre-~~established churches, and generally preach the Gospel of the Kingdom of God in definitely assigned territory.

"(C) I have had one and three-fourths year's experience in this kind of work.

"My average earnings in my present job are: Nothing.

"(E) In my present job I am an independent worker, working on my own account, not hired by anyone, and not hiring any help.

"(F) I am not now employed in national defense work.

"(G) Blank.

"(H) Other business or work in which I am now engaged is: None.

"Series (8) minister or student preparing for the ministry: I am a minister of religion.

"(B) I do customarily serve as a minister.

"(C) I have been a minister of the Watchtower Bible and Tract Society since January, 1941.

"(D) I have been formally ordained.

"Registrant's statement regarding classification:

"In view of the facts set forth in this questionnaire, it is my opinion that my classification should be class 4-D. Application has been made to add my name to the list of certified pioneers, filed by society with National Headquarters, Selective Service, 9-8-42.

"Either classify me in class 4-D, or suspend action until National Headquarters rules on such application."

Q. Miss McAfee, is the file arranged chronologically? That is, with respect to your obtaining the evidence from the Defendant?

A. All except the physical examinations, and those are separate in the back.

THE COURT: That sounded almost like a secret. Keep your voice up.

A. Pardon.

All but the physical examinations, and they are in the back of the file.

THE COURT: Thank you very much.

Q. Miss McAfee, what is this, if you know? (Indicating document.)

A. This one here? (Indicating).

Q. Yes?

A. This is a letter from George William Dodez—

MR. FEIGHAN: Your Honor, in order to expedite matters, the Government is agreeable that he does not have to identify anything that is in here through the witness, if

the Court will permit him, he can read it right to the jury, and we can save a little time.

THE COURT: I am not going to permit volumes to be read. The jury will have it in the jury room, and there is no need for reading volumes.

MR. SCHMIDT: If your Honor please, in the interests of expediting the matter, I shall proceed as hastily as possible, keeping in mind that I owe a duty to my client.

THE COURT: And to the Court.

MR. SCHMIDT: Yes.

THE COURT: And to the jury.

MR. SCHMIDT: That's right.

Q. Miss McAfee, will you obtain from the files the photograph of the church building and also the interior, in the file?

A. I think they are in there. (Indicating.)

MR. SCHMIDT: With kind respect and consideration for the Court, and the jury, I would like leave of the Court to read portions of the file, not to exceed—I think I can do this within 20 minutes—

THE COURT: Now, what are they? What do you mean, portions? I don't understand.

MR. SCHMIDT: Well, if your Honor please, here is a letter addressed on April 3, 1944, to the local draft board, composed of a page and a quarter.

THE COURT: Well, haven't you offered all of this in evidence?

MR. SCHMIDT: This has all been offered in evidence.

THE COURT: Well, isn't the jury going to have that, Mr. Schmidt? Is there any need to take 20 minutes to read something that the jury can read?

MR. SCHMIDT: There are certain certificates in here that I would like to point out especially to the jury. For instance, the minister's license issued by the State of Ohio; the Certificate of Ministry issued by the Watchtower.

THE COURT: Can't you point them out, and mark them as Exhibits A-1, and what ever number it is, and particularly call the jury's attention to it, and I am certain that the jury will be true to their duty in examining the Exhibits?

Now, if you prefer, of course, I will permit you to read it, but to go into endless reading of the file, I can't see

anything to be gained. You are increasing record here, which is costing your client funds. Now, I can't see anything to be gained by it.

MR. SCHMIDT: I understand.

THE COURT: Can't you take the Exhibits, mark them specifically that you particularly want to point out to the jury? I want to give you every opportunity to have those pointed out.

MR. SCHMIDT: Yes.

I will ask that the clerk now identify this as Defendant's Exhibit A-1, and the Minister's License as A-2; the letter of January 15, 1944, addressed to the members of Local Draft Board No. 2 at Orrville, Ohio, as A-3.

And in A-3, I would like to call the attention of the jury to the exterior photograph of the church building, entitled "Kingdom Hall", and the interior, showing the Defendant before the congregation assembled.

We also ask that the letter of Hayden Covington, addressed to the Director of Selective Service, Washington, D. C., as of September 8, 1942, containing, or appended thereto, the affidavit of ministry issued by the Watchtower Bible and Tract Society, above the signature of T. J. Sullivan, Superintendent of Evangelists, also be identified as A-4.

Also I wish to particularly point out to the jury the letter of March 4, 1944, of George William Dodez, addressed to the members of the Local Draft Board No. 2 at Orrville, Ohio, as Defendant's Exhibit A-5.

Also a letter of George William Dodez of April 3, 1944, addressed to the members of the Local Draft Board No. 2, Orrville, Ohio, as Defendant's Exhibit A-6.

Also we would like to have the jury especially consider the letter of James Rowe, Jr., the Assistant to the Attorney General of May 14, 1943, to which is appended the Statement of Frank X. Cull, hearing officer, as Defendant's Exhibit A-7.

And without specifically pointing out the residue of the file at this time, we would also like the jury to consider the residue of the file.

THE COURT: Well, of course, they will consider it. And it is their duty to consider it, but, if you wish, you can point out, you can summarize it by whatever is contained in those letters, I will permit you to do that. But, I don't

see any necessity for taking 20 minutes to read part of the file.

MR. SCHMIDT: I understand.

THE COURT: I will let you summarize a letter to emphasize whatever you wish to emphasize.

MR. SCHMIDT: Yes.

MR. FEIGHAN: Your Honor, I am going to object, not to the admission of these pictures, but object to the admission without proof, if he is going to use them for the purpose of showing that this is the Defendant's church, without further identification.

THE COURT: Well, they are received, they were received as part of the file.

MR. FEIGHAN: Yes.

THE COURT: And I have received them as part of the files in the Selective Service Board, they appear as part of the file.

MR. FEIGHAN: I understand that.

THE COURT: Now, no more importance may be attached to that, other than is indicated in the files.

MR. SCHMIDT: Now, if your Honor please, I would like to have the ruling, that is, it is the understanding of the Defendant that these are admitted in evidence, that is, as a part of the Defendant's case thus far.

THE COURT: No doubt about it.

(Thereupon, the paper writings, were marked and received in evidence as Defendant's Exhibits Nos. A-1, A-2, A-3, A-4, A-5, A-6, A-7, and made a part hereof, as if fully rewritten herein.)

MR. SCHMIDT: Miss McAfee, that is all. Thank you.

(Witness excused.)

MR. SCHMIDT: We will call Mrs. Roy Saurer.

Thereupon the Defendant, further to maintain the issues on his part to be maintained, called as a witness MABEL SAURER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF MABEL SAURER

By Mr. Schmidt:

Q. What is your name?

A. My name is Mabel Saurer.

Q. And, Mrs. Saurer, did you sign this list of notarized names? (Indicating.)

MR. FEIGHAN: I object, your Honor. May I look at the paper presented?

THE COURT: I don't know what it is going to be as yet.

MR. FEIGHAN: He has presented it to her and asked her if she signed it.

THE COURT: Well, if she signed something—

MR. FEIGHAN: Let's have some identification first.

Q. Well, I am handing you Defendant's Exhibit A-3, and I am asking you what this is?

A. This is evidence that George Dodez is an ordained minister.

MR. FEIGHAN: I object.

THE COURT: Objection sustained.

Q. Just state what it is, that is, not the conclusion.

MR. FEIGHAN: I object, your Honor, to the statement what it is. He hasn't identified that she knows what it is.

THE COURT: You have a rather unusual way of offering a document, or documentary evidence. Ask her if she can identify it as her signature. Now, the instrument speaks for herself. She can't explain what it is.

Q. Can you identify your signature on this document?

A. This, right there, (indicating) Mabel Saurer, Wooster, Ohio.

Q. And did you read the statement appended thereto, the statement in connection thereto before you signed this?

A. I did.

Q. And what is this?

MR. FEIGHAN: I object, your Honor, to that, he hasn't identified those photographs in a proper manner to present them to this witness.

THE COURT: Well, they haven't been identified yet, that is what he is seeking to do now.

MR. SCHMIDT: That is right. Your Honor please, I believe that, having been admitted in evidence, it wouldn't be necessary for further identification. But I am doing this in order to satisfy the Government, if they so desire it.

THE COURT: Well, I never knew that the trial of a case in District Court means that the party has to satisfy the Government. This is a trial to a jury, presided over

by a Court. Now, don't do anything to satisfy anyone, Mr. Schmidt, proceed with your case.

Q. Are you a member of the congregation, that is, of the church congregation in Wooster, Ohio, over which the Defendant presides?

A. I am one of the congregation.

Q. You are one of the congregation?

A. That's right. I am a witness for Jehovah, God's name.

Q. And you are a member in the congregation over which the Defendant presides, then?

A. I attend regularly. We have no membership.

THE COURT: You have what?

MR. SCHMIDT: She says: "I attend regularly."

THE COURT: She said something else.

MR. SCHMIDT: I didn't understand.

THE COURT: (To the Reporter) Did you get that?

(Answer read by the Reporter.)

Q. Now, are you affiliated with, and in the congregation of the Church of Jehovah's witnesses, located in Wooster, Ohio?

A. I am.

Q. Over which the Defendant is the presiding minister?

A. That's right, I am.

Q. Now, is this a likeness of the outside of the church building where you regularly attend?

A. That is the Kingdom Hall at Wooster, Ohio.

Q. Now, just kindly answer the questions.

MR. FEIGHAN: That is the thing I am objecting to.

THE COURT: She has answered the question, Mr. Schmidt.

MR. SCHMIDT: All right.

MR. FEIGHAN: I am objecting to those pictures, on the standpoint of her identifying them. That could be the picture of Kingdom Hall anyplace in the country.

THE COURT: That is what she said, she identified it as Kingdom Hall at Wooster, Ohio.

MR. FEIGHAN: The photographer should prove that the pictures were taken, first, he should bring it in properly.

MR. SCHMIDT: Your Honor, I don't see the necessity

of it, having been admitted in evidence.

THE COURT: Now, I have ruled on it. There isn't any need for further discussion. Let us proceed.

Q. Now, is this the likeness of the exterior of the church building at Wooster, Ohio, over which—

THE COURT: Hasn't she answered that, Mr. Schmidt? You asked the question, she has answered it.

MR. SCHMIDT: Very well.

Q. Now, is this the likeness, or representation, by pictorial production of the interior of the church building over which the Defendant, George William Dodez presides?

A. That picture was taken at Wooster, Ohio.

THE COURT: Now, just one second. Whether he presides over it or not, that is a question of fact for the jury to decide.

MR. SCHMIDT: I understand.

THE COURT: Ask her whether or not that is the interior of the building that she attends, the church that she attends. But, putting the answer in her mouth is wrong.

Q. Is this a representation of the interior of the building in which you attend?

A. It is. That picture was taken in the local Kingdom Hall at Wooster, Ohio.

MR. FEIGHAN: I object, your Honor.

MR. SCHMIDT: The latter part—pardon me.

THE COURT: Well, it doesn't harm anyone, anyway, go ahead.

Q. Is this a likeness—the individual that is presiding over the congregation in this photograph, who is this individual? (Indicating.)

THE COURT: Now, Mr. Schmidt, I am not going to permit you to put that question that way. That is an answer that you are giving.

MR. SCHMIDT: I see.

THE COURT: The fact that he is presiding is a question for the jury to decide.

MR. SCHMIDT: I understand.

THE COURT: That is not a question for you to decide. You are asking a question and answering it at the same time.

Q. Do you see the likeness of the Defendant in this photograph of the interior of the church building?

A. It is, it is George W. Dodez.

THE COURT: Now, let me put the question to her.

MR. SCHMIDT: All right.

THE COURT: Does that correctly represent—

THE WITNESS: It does.

THE COURT: Does it correctly and truly represent the appearance of the interior of the building which you described as Kingdom Hall?

THE WITNESS: It does.

THE COURT: All right, proceed.

Q. Does a portion of the picture correctly describe the Defendant in this case?

THE COURT: Is there any doubt about that? Is that a bad picture of him, is that the reason you are asking that question? Can the jury recognize it? The jury sees him, is it such a bad picture that the jury won't be able to recognize him?

MR. SCHMIDT: I think they will recognize him. Thank you very kindly.

THE COURT: All right.

MR. SCHMIDT: That is all.

MR. FEIGHAN: Just a minute, please.

CROSS EXAMINATION OF MABEL SAURER

By Mr. Feighan:

Q. You state you are a member of Jehovah's Witnesses?

A. I am one of Jehovah's witnesses, a witness for His name.

Q. Are you a minister of the Gospel?

A. I am not a minister. We have a pastor over the congregation.

Q. I asked you the question: Are you a minister of the Gospel?

A. I represent Jehovah, God's Kingdom, I am a witness for His name.

Q. Answer the question, please: Are you a minister of the Gospel?

A. No, I am not a minister.

MR. FEIGHAN: That is all.

THE COURT: Ladies and gentlemen of the jury: We are about to take a recess. During the recess, you will observe the following admonition: Do not speak to anyone about this case, or permit anyone to speak to you about it; do not discuss it among yourselves, or come to any conclusion as to the guilt or innocence of this Defendant, and wait until all the evidence and the Charge of the Court has been given. If anyone attempts to talk to you about the case, report it to the Court immediately. The jury will be excused.

(Recess taken.)

MR. SCHMIDT: I will ask Mr. Dodez to take the witness stand in his defense.

And further, to maintain the issues on his part to be maintained, the Defendant, George William Dodez, offered himself as a witness in his own behalf, and, being first duly sworn, testified as follows:

DIRECT EXAMINATION OF GEORGE WILLIAM DODEZ

By Mr. Schmidt:

Q. What is your name?

A. George William Dodez.

Q. And where do you reside?

A. Route 2, Orrville, Ohio.

Q. And what is your occupation or profession?

A. Ordained minister of the Gospel.

Q. Do you do anything else?

A. No, my entire time is devoted to preaching the Gospel of the Kingdom.

Q. And did you register under the Selective Training and Service Act of 1940?

A. I did.

Q. Under what Board?

A. Under Board No. 2 for Wayne County, Ohio.

Q. What were you doing at the time you registered?

A. I was a duly ordained minister of the Gospel, preaching the Gospel of the Kingdom only.

Q. And have you done anything else since the day of your registration?

A. No. My entire time has been devoted exclusively to preaching the Gospel of the Kingdom.

Q. Now, you say you have been ordained?

A. I have.

Q. What are the authorities and circumstances that you rely upon for your ordination?

A. In order to properly answer the question, it would be necessary that I refer you back to the time that I began my study of the Bible, God's Word of Truth.

From a child up, I was taught the Bible. I attended church regularly at the Methodist Church in Apple Creek, Ohio.

Then in the year, about 1939, I became highly interested, more so, in the Bible, and I obtained a book entitled "Salvation."

This book was a Bible help, supposed to aid individuals interested in the Kingdom to properly study the Bible, that they might know what was contained therein.

As I studied this book, along with the Bible, I found that it was Jehovah's purpose, some day, to establish a righteous government over this earth, and that certain individuals upon this earth would gain life in such government. Also, by considering the physical facts upon the earth today, I found that the entire earth—

MR. FEIGHAN: Your Honor, I do object to this type of testimony.

THE COURT: The objection will be sustained.

MR. SCHMIDT: May the record show an exception, respectfully, and we will, subsequently, when the jury is absent, make an offer relative to that.

THE COURT: Relative to what, Mr. Schmidt? His testimony as to what he isn't, and what he became?

Q. Now, what are your authorities—

THE COURT: I will permit him to state that, but he is stating what he found in the Bible, and all those things.

MR. SCHMIDT: That is true.

Q. Now, what are the authorities?

A. The authorities that I rely upon for my ordination are as follows:

In 1941—

THE COURT: Now, just one second. I want this understood now. I want your record to be clear now.

MR. SCHMIDT: That is true.

THE COURT: I have sustained the objection to his recital as to what he found in the Bible.

MR. SCHMIDT: That is true.

THE COURT: That, I am sustaining the objection to. Now, do you wish to offer any proof as to that? Or what is it you wish to do?

MR. SCHMIDT: I want to make an offer as to that.

THE COURT: Do you contend that he has a right to show what he found in the Bible?

MR. SCHMIDT: No.

THE COURT: That is the only question.

MR. SCHMIDT: Yes, I understand that.

Q. I will ask you, Mr. Dodez, the question—that is, the matter as to what you found in the Bible, at this time, I will ask you that you exclude so much of that as does not bear upon your ordination. Now, you have been asked the question: What are the authorities and circumstances that you rely on for your ordination?

A. In looking into the matter concerning a minister, I noted that the Watchtower Bible and Tract Society has ministers of the Gospel in definitely assigned territories throughout the world, preaching the Gospel of the Kingdom, in accordance to the laws of Almighty God—

MR. FEIGHAN: Your Honor, I object to those statements.

THE COURT: Now, again he is talking about what has been done somewhere else. Now, it is not responsive to the question.

Q. What are the authorities, Mr. Dodez, and the circumstances that you rely on for your ordination?

A. In January, of 1941, after taking a course—

THE COURT: Now, you have been asked: What are the authorities that you are relying on. It is not what you did in January of 1941.

Q. By the authorities, I mean have you any documents, or have you any authorization issued by any society or organization, or do you rely upon any passages in the Scriptures, but only with respect as to what touches upon your ordination.

MR. FEIGHAN: I object to the question, he is answering the original question, he is answering it for him.

THE COURT: Well, let me hear the question.

(Question read by the Reporter.)

THE COURT: I will let him answer that, without quoting what the Scriptures are, if that is what he relies on, I will let him state that.

A. In January, of 1941, there was issued to me, by a representative of the Watchtower Society, a card of identification, which card plainly states that the one so holding such a card is an ordained minister of the Gospel.

The Scriptures that I rely upon for such ordination are those stated at Isaiah 43:9-12; that it is necessary at this time for God to bring forth—

THE COURT: Now, that is not what I said.

A. Also Matthew 10:7-12; Matthew 24:14; Acts 20:20; 1 Peter 2:21;

After receiving such identification card, or card of ordination, I began to preach the Gospel of the Kingdom in accordance with the regulations stated by the Watchtower Society.

Q. Now, pardon me, what are the events in your ministerial career?

A. I preach the Gospel of the Kingdom from house to house, in territory that I am definitely assigned, and which territory includes parts of three counties, namely: Wayne County, Medina County and Holmes County, all of Ohio.

I call on each individual in that territory, and present to them the Message of the Kingdom. Those who are interested, a call is made at a later date, and a Bible study is arranged in their home.

MR. FEIGHAN: Your Honor, I don't think that this is necessary testimony. It is going not to his ministership, it is the preaching of what their doctrine is, and their manner of operation.

THE COURT: Well, I will let him recite what he does, which he contends constitutes his ministerial status. The Courts have passed on that, but so that the record will be complete, I will let him continue.

A. I have the authority to perform marriages anywhere in the State of Ohio, and which was last used on January 1, 1944—

THE COURT: Now, I don't want to know when you used it, or what you did. You were asked one question.

THE WITNESS: That's right.

THE COURT: What do you rely on—

THE WITNESS: I conduct funeral—

MR. SCHMIDT: Now, pardon me.

THE COURT: —to prove your ordination.

MR. SCHMIDT: The second question is now under consideration.

THE COURT: Well, what was his career, right?

Q. To refresh your memory, what are the events in your ministerial career?

A. Besides those stated so far, conduct funeral and baptismal services, deliver sermons to a congregation that assembles at the church building in Wooster, Ohio, three times each week.

Besides conducting the meetings in the church, it is the duty of the pastor of such church to look after the congregation, see that each one attending such meetings are provided with such material to carry on their church work; to see that bills of the church building are properly taken care of; also to see that someone takes care of cleaning the church building.

These things are necessary to have a proper church organization.

Q. Now, have you worked out a schedule of the duties that you perform as a minister in connection with your church congregation and your other ministerial activities, a weekly schedule?

A. Yes, I have.

Q. Well, now, what are the features of that schedule?

MR. FEIGHAN: Your Honor, I want to object at this time to this testimony on the ground that the indictment charges his failure to carry out the duty required in answering an order of his draft board, and also objecting on the grounds that the Courts have ruled that the claim as a minister is not a valid claim, that is, a valid defense to this indictment.

THE COURT: The objection will be sustained:

You may make your proffer and dictate that into the record right now, what you intend to have him show. I permitted him to make those statements so far, but *the* rest of it, you can make a proffer of it.

MR. SCHMIDT: That is, to the exception to the ruling of the Court, the record will kindly show, as a proffer in behalf of the Defendant: The Defendant would testify

that—

THE COURT: Well, now, I don't want this jury to hear what you dictate.

MR. SCHMIDT: Yes, your Honor.

(Whereupon the following proffer of proof in behalf of the Defendant was made out of the hearing of the jury:)

MR. SCHMIDT: On Sunday mornings from 9:00 to 12:00, and Sunday afternoon from 12:30 to 3:30, I spend the time preaching the Gospel of the Kingdom from house to house, explaining to persons with whom I come in contact, Jehovah's purpose towards mankind. From 3:30 to 5:00 I conduct a Bible study class at Congress, Ohio. On Sunday evening, from 7:30 to 8:30, I conduct the Watchtower study at Kingdom Hall, which is the title given to our church building. From 8:45 to 9:15, I conduct the "Course in Theocratic Ministry," in the church building. From 9:15 to 10:00, I take care of the church business with different ones of the congregation.

On Monday morning, I spend the time preparing for meeting on Wednesday evening. Monday afternoon, from 12:00 noon to 5:00, I make private visits to the homes of ill and bereaved. Monday evenings from 7:00 to 9:00, I conduct a Bible study class at Apple Creek, Ohio.

On Tuesday morning, I spend the time taking care of home duties. Tuesday afternoon from 12:00 to 5:00, I make private calls in my ministerial work. On Tuesday evening from 7:00 to 9:00, I conduct a Bible study class at Shreve, Ohio.

On Wednesday morning, I make a final check on arrangements for meeting on Wednesday night, and studying, that is, I use a portion of that time in making preparation and study. Wednesday afternoon from 12:00 to 5:00, I make private calls in my ministerial work. From 5:00 to 5:30 of that day, I take part in the public distribution of Watchtower and Consolation magazines. From 6:00 to 7:00 on Wednesday, I conduct private home Bible study course in Wooster, Ohio. Wednesday evening from 8:00 to 9:00, I conduct a prayer and business meeting at the church.

On Thursday morning, I prepare the sermons and other materials for the Friday night meeting. Thursday afternoon from 12:00 to 5:00, I spend preaching the Gospel of the Kingdom from house to house, explaining to the persons with whom I come in contact God's purpose toward

mankind. On Thursday evening, from 7:00 to 10:00, I conduct two private home Bible studies.

On Friday morning, from 9:00 to 12:00, and Friday afternoon from 1:00 to 5:00, I make back calls on persons that I contacted previously in my house to house preaching activity. Those people on whom I make these back calls, manifest an interest in the Bible, and were desirous of additional help in studying the Bible. Friday evenings from 8:00 to 9:00 I conduct a Bible study class at the church.

On Saturday morning, I spend the time preparing for the Sunday evening meeting. Saturday afternoon, 2:00 to 4:00, and Saturday evening, 7:00 to 9:00, I devote the time in publicly preaching the Gospel of the Kingdom by means of the Watchtower and Consolation magazines, which bear discussions on Bible doctrines and revealing, to the public, the understanding of the present day events in the light of fulfilled prophecies.

Now, this makes a total of 52 hours every week spent in preaching the Gospel of the Kingdom, excluding time spent in preparing sermons and looking after church business.

Besides conducting the meetings at our church, it is the duty of the pastor to look after the other things necessary to have an efficient, working congregation, such duties of appointing individuals to keep the church building clean; calling on individuals in the congregation that are sick and need spiritual comfort, and those who need advice that they might take the proper course leading to life in the new world. Also, I see that expenses on the church building are paid when due. I also see that the congregational individuals are provided with sufficient Bible helps and other materials to properly carry on the church activity; and many minor things that are necessary to keep the church going.

(Whereupon the following proceedings were had in the hearing of the jury.)

MR. SCHMIDT: That is all of the offer.

Q. Now, what are the events that show the arbitrariness of the local board upon which you rely as your defense?

MR. FEIGHAN: I object, your Honor.

THE COURT: Objection sustained.

MR. SCHMIDT: And with an exception. We wish to make an offer of proof.

(Whereupon the following proceedings were had out of the hearing of the jury:)

MR. SCHMIDT: The Defendant, if he were permitted to testify, would answer:

Section 623.1, part C of the Selective Training and Service Act of 1940, as amended, states: In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal and fair justice.

With such points in mind, I entered the office of Local Board No. 2, for Wayne County, Ohio, on the night of December 7, 1942, for a personal appearance hearing before my board after having been classified 1-A on November 30, 1942. It was my sole purpose in going there to point out to the members of the local board information in my files showing that I was entitled to a IV-D classification, instead of the 1-A classification I had received. I also had additional evidence, such as affidavits, which I desired to present to the local board in support of my claim for a minister's classification of IV-D.

As soon as I entered the office of the board, Mr. Hart told me to have a chair. Then he read my letter requesting a personal appearance before the local board. Mr. Hart then asked, "Why do you want this hearing?"

I answered: "I received a 1-A classification, and it is my desire to have this hearing to point out to you information in my file proving that I am entitled to a minister's classification of IV-D."

Mr. Hart did not say anything more concerning this, but made a quick "All right" and began to ask me some questions and make notations as follows:

"Your name?"

I answered: "George Dodez."

"Your occupation?"

"Ordained minister."

Mr. Hart made the notation: Claims to be minister.

"Education?"

"Graduated from high school in 1940."

"Did you go to a Theological seminary?"

I said, "I began an intensive study of the Bible at home in 1939, with the use of Watchtower Bible help." When I

tried to explain more, Mr. Hart said, "We'll hear that later on."

Then he asked if I was married, to which I answered, "Yes."

Then he asked if I had any additional information. I told him, "There are several things in my file that I would like to call to your attention and other additional evidence that I would like to present."

Mr. Hart then interrupted and said, "We have other registrants to consider tonight, and you can leave that material here, and we will look it over later tonight."

With this, he called in the next registrant.

I tried to point out things in my file, but the board completely ignored me and began to interview the next registrant. There was nothing left for me to do but leave.

The next day I received a 1-A classification.

Immediately, I made a personal call on each of the draft board members. The first member I contacted was Mr. Cain of Orrville, Ohio. After explaining to him that I did not have a fair hearing, and pointing out to him things that were in my file, he admitted he had not read anything in my file; that the hearing was unfair; that he did only what the Chairman of the board told him to do; and it was perfectly all right for me to have another hearing the next Monday night. He also told me that within the next day or so he would go to the office of the local board and look over my file.

The next member I talked to was Mr. Welty of Apple Creek, Ohio. Mr. Welty was not present when I had my hearing, but knew what had taken place at the hearing. After explaining more concerning the situation to him, he said: "It is all right with me for you to have a rehearing next Monday night if the Chairman, Mr. Weygandt, gives his okay."

The next member I contacted was Mr. Hart, who had acted as Secretary the night of my hearing and asked me those questions which were already answered in my questionnaire. Mr. Hart's attitude had changed somewhat from his rush through attitude the night before at my hearing. It seemed as if he had lots of time now. After spending much time trying to explain to him that I was a minister and entitled to a IV-D classification, he insisted that one had to be a graduate from a Theological Seminary in order

to be a minister and receive a IV-D classification. I tried to show him from the draft laws that such was not necessary, but he did not care what the draft laws said. He had his own opinion, and that is what he was going to go by. Seeing that he was in a radical mood, I left.

Next I contacted Mr. Weygandt, Chairman of the board. But I did not talk to him face to face. Not knowing where he lived, I called at the office where he worked, asking to see Mr. Weygandt. The girls in his office informed me that he was home to lunch just then, but would get him on the phone if I desired. Immediately, one of them put through a telephone call to Mr. Weygandt's residence and reached him immediately.

(Whereupon the following proceedings were had in the hearing of the jury:)

THE COURT: Mr. Schmidt, is it going to take you some time? If so, I will let the jury go.

MR. SCHMIDT: Yes. And, if your Honor please, I would also suggest another question, and if there is an offer to be made, we might make the offers at one sitting, so as to expedite the matter, if that is permissible.

THE COURT: You are assuming that I am going to sustain the objection.

MR. SCHMIDT: I will graciously do whatever is in the Court's wishes.

THE COURT: I don't know; as a matter of fact, you are dictating an awful lot in there now.

MR. SCHMIDT: That is true.

THE COURT: I want to hear what it is, I want to know what that is that you have dictated in there. I don't want to be pre-judging any question, Mr. Schmidt. There isn't any rhyme or reason to assume that I am pre-judging anything. I want to conduct this in accordance with the established principles of law, as laid down by the reviewing Courts. Now, I don't know what your next question will be.

It is now 12:15, Cleveland time, 1:15, Federal time. Will it take you another ten minutes to dictate this?

MR. SCHMIDT: It will take more than that.

THE COURT: It will take more than that? There isn't any reason why the jury should be sitting here, unless you insist. The jury can be excused, and you can dictate it into the record in the absence of the jury, can you not?

MR. SCHMIDT: That is true.

THE COURT: All right. Ladies and gentlemen: I am going to take the noon adjourment at this time. During the adjournment you will observe the admonition that the Court has heretofore given. You will return to your seats at the time that the Court resumes, which will be 2:00.

The Bailiff will adjourn Court until 2:00 this afternoon.

(Whereupon an adjournment was taken for lunch, during which time the offer of proof was continued, pursuant to the instructions of the Court, as follows:)

MR. SCHMIDT: (Continuing) After explaining to him who I was, and concerning my hearing the night before and my desire to present my case to the board for their consideration, he too agreed that I did not have a fair hearing, and that they would grant me ten minutes the following Monday evening to properly present my case to them. Thanking him for his kind consideration of the matter, I hung up.

On arriving home, I wrote out another letter requesting another personal hearing before the board. The next morning, December 9, 1942, I called at the office of the local board to deliver my letter requesting another hearing. When I told the Clerk of the board what I had, she handed me a letter and told me to read that first, not taking my letter requesting a hearing. Asking her concerning the letter, I was informed that she knew nothing of the matter, and I should talk to the Chairman, Mr. Weygandt. I left the office, taking with me my letter and also the letter she had given me from Mr. Weygandt. Such letter was a refusal to give me a hearing, and which read as follows:

"December 8, 1942.

"George W. Dodez, R. F. D., Apple Creek, Ohio.

"Dear Sir:

"After checking up with various members of the local board regarding a personal appearance rehearing of your case for Monday, December 14, I find that a majority of the members are opposed to such a rehearing.

"I might mention, Mr. Dodez, that I have changed my opinion from what I told you over the phone Tuesday noon. I can see no justification for a further hearing. As explained to you, our state headquarters has asked that we limit all registrants to one personal appearance hearing, and after deliberating over your request, I can see no reason for making an exception in your case.

"You, of course, have a right to appeal the findings of the local board, and such an appeal must be filed within 10 days from the date given on your classification card.

"Yours very truly, Local Board #2 for Wayne County.

"Ross S. Weygandt, Chairman."

This letter is an admission by Mr. Weygandt, Chairman of the board, that they were prejudiced in my case, and did not give me a fair hearing.

Immediately upon leaving the local board's office, I went to the office of Mr. Weygandt and this time he was in his office. When I asked him concerning the letter about changing his opinion, he exploded like a bomb, and began to run down Jehovah's witnesses, not giving me a chance to defend myself or make any statements. As I left, he said, "We have already put three of you Jehovah's witnesses behind the bars, and if you Jehovah's witnesses do not like it in this country, then you can get out."

Such statement was very rude and loud. These statements show that with such an attitude they could not act on my case without prejudice.

When I called at the office of the local board to sign my questionnaire for an appeal, I noticed under "Minutes of other Action" that on classifying me 1-A on November 25, 1942, it states: "Not an Ordained Minister as per public recognitio." This definitely shows that the draft board did not go by the draft laws in considering my case, but used their own opinion and public recognitio. Does this mean that because one's worship of Almighty God differs from that of the general public he cannot worship God? The draft laws were written so that each registrant might be classified with the same rights and privileges, but when one is classified by public recognitio instead of the draft laws, it is denying that registrant his constitutional rights.

After filling out the appeal papers, I had no more conversation with the local draft board until after I received a new classification card dated June 11, 1943, stating that the Appeal Board had reclassified me in IV-E. Upon receiving the IV-E classification, I wrote a letter to the Government Appeal Agent, asking him to use his influence to have my case reopened. Not receiving an answer from him, I went to him personally, and found that he was highly prejudiced toward Jehovah's witnesses, and the following conversation resulted:

Mr. Wertz: "The Watchtower Society has no right to ordain anyone."

Myself: "The witnesses are recognized as ministers, how about that certified list?"

Mr. Wertz: "They just took 12 or 15 of the big shots at Brooklyn and put them on that list and gave them IV-D."

Myself: "I have a friend that got IV-D."

(Ignored.)

Mr. Wertz: "If your name isn't on that certified list, you are shit out of luck. There are two of you guys from this county behind bars, and you are either going to the Army or to prison. Take a hint from me, you have caused that board a lot of trouble, and they are getting tired of you, your cas being before them since December."

I tried to show him a letter from the State Director of Selective Service that no more names are to be added to the certified list and local boards are to consider the matter. He ignored me, put on his hat, and went to a telephone and put in a call. Obtaining no justice or information as to what to do, I went to the office of the local board and asked for a rehearing on my case, but was informed by the clerk that such would be impossible. I then asked the clerk how I could get in and talk with the members of the board, but she pointed out such would be impossible. Having no other alternative, I went to the home of each member, except Dr. Adair, he being a doctor and very busy, I could not contact him, and the following conversations resulted:

Mr. E. Cain: "To receive classification of IV-D, you must be on the certified list. Anyway, you are not ordained."

Myself: "Oh, yes, but I am ordained. I have a copy of my letter of ordination in my file."

(He knew nothing of this as he never read my file.)

Mr. Cain: "Not on certified list, you cannot have IV-D." I tried to show him letter from State Headquarters and from Mr. Hayden Covington, 117 Adams Street, Brooklyn, New York, concerning the certified list, but he paid little attention and went on, saying: "There is nothing we can do. We talked this over the other night—" no doubt after I sent that letter to the Appeal Agent. "—and Weygandt—" Chairman of the board"—has information as to who is an ordained minister. Ministers have to go to four years of hard studying at college."

Myself: "What information do you want that will prove

I am an ordained minister?"

Mr. Cain: "You are not on the certified list."

Myself: "Then it would not matter what information I gave you or if I went to ten years of college, if my name isn't on the certified list, then I will not get IV-D."

Mr. Cain: "That is right, you are not on the category."

Mr. Cain acts as though he simply fills a chair at the board meetings and does what the Chairman says.

Mr. D. E. Arnold: "What is on your mind?"

Myself: "I am George Dodez from Apple Creek."

Mr. Arnold: "Oh, yes, I thought I recognized you."

Myself: "You are a member of the draft board?"

Mr. Arnold: "Yes."

Myself: "You took Mr. Hart's place, I believe. I was placed in Class 1-A by the local board in December and later in IV-E by the Appeal Board, but I did not appeal for IV-E, but IV-D, as an ordained minister, being one of Jehovah's witnesses."

Upon this last statement, "one of Jehovah's witnesses" Mr. Arnold's expression changed from friendly to that of a goat.

Mr. Arnold: "I know all about your case."

Myself: "I thought you would. I would like the local board to reopen my case and consider my classification of IV-D."

Mr. Arnold: "We do not recognize Jehovah's witnesses as ministers, neither does the Government. You are in 1-A, and are going to stay there."

(Very prejudiced to Jehovah's witnesses.)

"Draft laws don't recognize them."

Myself: (Reading part of the draft laws.) "The unincorporated body of persons known as Jehovah's witnesses are considered to constitute a recognized religious organization."

Mr. Arnold: "I don't care what you are reading, if you think you can sit at home and in two weeks be a minister, you are crazy. You have to go to college."

Myself: "Christ Jesus didn't go to college."

Mr. Arnold: "You aren't Christ Jesus."

Myself: "How about his disciples?"

(No answer.)

Mr. Arnold: "If you don't like it in this country, then

why don't you go to Germany or some other country?"

Myself: "In Germany, the witnesses have been in concentration camps for the last 10 years."

Mr. Arnold: "That is where you all ought to be." Very loud and abrupt in all his talk. I left.

My conversation with Mr. Clayton Welty:

Myself: "Why wasn't I classified in IV-D?"

Mr. Welty: "We can't do it."

Myself: "I would like to have the local board reopen my case."

Mr. Welty: "Only if new and sufficient evidence is presented. Why did the Appeal Board put you in IV-E?"

Myself: "I don't know as I did not appeal for IV-E, but IV-D. And if you want to ask me, there is something crooked going on." Mr. Welty wanting some excuse to stop the conversation walks away. "I can tell you one thing if my induction papers come I will not appear for induction."

Mr. Welty: "Well, that is up to you, but you know what will happen."

Myself: "If I have to go to jail for disobeying the draft laws, then you guys also should have to go to jail for failing to abide by them."

Mr. Welty: "That all may be." Mr. Welty cooled down and returned to continue talking.

Myself: "What additional evidence do you need to prove I am an ordained minister?"

Mr. Welty: "My opinion is that you must go four years to college and three years to a seminary to be an ordained minister."

Myself: "That isn't in the draft laws but it is your own opinion. Why don't you abide by the draft laws, they are written to cover Jehovah's witnesses?"

Mr. Welty: "Why didn't the Appeal Board consider you as an ordained minister? We are through with your case. It's up to the Appeal Board."

Myself: "The file has been sent back to the local board and it is up to the local board. They now have the authority to reopen the case and give me proper consideration and change my classification from IV-E to IV-D."

Mr. Welty: "We are through with your case and there is no new evidence to reopen the case."

Myself: "If you would consider my file, there is plenty of evidence to put me in IV-D."

Mr. Welty: "You are not on the certified list."

Myself: "You don't have to be. How about Opinion No. 14?"

Mr. Welty: "I don't know anything about that."

Myself: "It is in my folder."

Mr. Welty: "I didn't read your folder. Do you have a copy of it?" I then showed him the letter that was sent to the local board explaining the new policy about Jehovah's witnesses which he read. After reading it he didn't know what to say but told me he still didn't think I was entitled to IV-D and asked why I didn't write National Headquarters if they had done something wrong. Very radical. I could do nothing, so I left.

Mr. Ross S. Weygandt, Chairman of the local board.

In December, when appeal was made to the Appeal Board, a letter was sent hitting Mr. Weygandt very hard, showing his prejudice. When I contacted him this time, he was the very opposite. I talked to Mr. Weygandt for over an hour explaining Bible prophecy with present day events and he listened, although disagreeing on a few minor points. He isn't very much for any minister. He told me that they would not reopen my case or classify me in IV-D, but if National Headquarters requested it, they would reopen my case and consider my classification of IV-D. Due to the fact that my name was not on the certified list, he would not reopen my case or give me IV-D.

On January 15, 1944, I sent to the local board additional evidence proving my status as an ordained minister, and asked that my case be reopened. Such request was refused. Each time I talked to the draft board concerning my status as a minister, they would sidestep the question as Selective Service Rules and Regulations on class IV-D: Minister of religion or divinity student, definitely states who shall be placed in IV-D classification. This letter definitely shows that the board was prejudiced in my case when they used their own ideas instead of what is stated in the draft laws. Furthermore, on May 15, 1944, I called at the office of the local board to copy some desired information from my file, but after telling the clerk what I desired, I was informed that I would have to first get the permission of the local board. Asking how such permission could be obtained, I was told to write the local board.

a letter for such permission. This letter was written immediately and delivered to the board the same day, and which letter reads as follows:

"Gentlemen:

"Dear Sir:

"In answer to your letter of March 8, 1944, the local board wishes to inform you that they have no knowledge as to whether or not any of Jehovah's witnesses have received a IV-D classification. If any have received such classification, the board has no knowledge as to how such classification was determined.

"Yours truly,

"Local Board # 2, Wayne County,

"Ross S. Wegandt, Chairman."

This letter of the draft board is definite proof that they did not consider the material I presented to them concerning my claim as a minister, and as they state, "the board has no knowledge as to how such classification—" that is IV-D,—"was determined." Yet Section 622.44 of the to what was necessary to be classified as a minister. And no matter what evidence I presented to them, they still would not consider my appeal for a IV-D classification. On March 8, 1944, I sent to the draft board a letter asking them three questions. The letter read as follows:

"Gentlemen:

"This letter is a request for some information regarding the classification of Jehovah's witnesses.

"Does the unincorporated body of Jehovah's witnesses constitute a recognized religious organization under the Selective Service System? Do any of Jehovah's witnesses receive a IV-D classification? If so, how can such classification be determined?

"Your immediate answer will be appreciated.

"Sincerely yours, George Dodez."

I received an answer to my letter on March 17, 1944, which reads:

"This is a written request as directed by clerk of the draft board, Edna McAfee, for your permission

to let me copy from my file a list of the various letters that are contained therein for my future reference.

"George Dodez."

Not receiving an immediate answer, I called at the office of the local board to find what reply would be given to my letter. The clerk said that the board refuses to let me copy anything from my file, and if I wanted any information, it could only be obtained by the clerk reading it to me provided she was not busy. It seems as if the clerk was very busy and did not know when she would be free to give me the information I desired. I was also told by the clerk that they had been very lenient in letting me see my file, and that they did not need to let me even see my file. I asked the clerk for a written statement concerning this, but none was ever received.

This is another act of arbitrariness on the part of the local board, when the Selective Service Rules and Regulations say:

"Part 605.32, information not confidential as to certain persons.

"No information shall be confidential as to the persons designated in this section, and any information may be disclosed or furnished to or examined by such persons, namely:

"(1) The registrant, or any person having written authority from the registrant.

"(2) The members and clerical and stenographic employees of the local board, etc.

"605.39 'Disclose,' 'furnish,' 'or examine' defined. When used in this part, the following words with regard to the records of, or information as to, any registrant shall have the meaning ascribed to them as follows:

"(1) 'Disclose' shall mean a verbal or written statement concerning any such records or information.

"(2) 'Furnish' shall mean providing in substance or verbatim a copy of any such record or information.

"(3) 'Examine' shall mean a visual inspection and examination of any such record or information at the office of the local board or Board of Appeal as the case may be."

These facts show that the draft board has been very arbitrary in my case and have gone against the draft laws instead of classifying me in accordance with them.

(Thereupon the offer of proof was concluded.)

AFTER RECESS

(Whereupon the hearing was continued pursuant to adjournment.)

THE COURT: Have you completed the proffer of this morning?

MR. SCHMIDT: To the question No. 3, yes.

THE COURT: All right.

MR. SCHMIDT: The proffer that was made to the last question is completed, yes, sir.

THE COURT: Proceed.

By Mr. Schmidt:

Q. What are the reasons that you assign for not taking up work of national importance?

A. There is no question that I am an ordained minister, and entitled to the classification of IV-D, instead of a classification received by the local board of IV-E.

I have been an ordained minister since sometime before my registration with the local board on June 30 of 1942, at which time it was plainly stated to the registrar that my occupation was that of an ordained minister; and when my questionnaire was filled out, it was pointed out that I was an ordained minister, and that the occupation I engaged in was that of only an ordained minister, and nothing else.

The draft board, that is, the Local Board No. 2 for Wayne County, Ohio, has, at all times since my classification on the date of November 30, 1942, been arbitrary and unjust.

Mr. FEIGHAN: I object, your Honor.

THE COURT: The objection to that part of the witness's answer is sustained.

MR. SCHMIDT: All right.

Q. What more have you to say concerning the reasons that you assign for not taking up work of national importance, aside from the matter that you just mentioned, or were about to mention?

A. When I appeared at the office of the local board to sign my questionnaire for an appeal, I noticed under "Minutes of Action" on the first classification of 1-A, a notation stating: "Not an ordained minister as per public recognitio." This shows that the draft board—

Q. Mr. Dodez, please do not state conclusions, but you may continue.

A. Such a statement, does this mean, because one desires to worship Almighty God, they cannot do so according—

MR. FEIGHAN: I object, he is asking the questions at this stage.

Q. I believe we cannot, at this time, Mr. Dodez, use argument. You understand?

A. That's right.

Q. But, go ahead, I will try to correct you.

A. My final classification was that of the classification of IV-E, as a conscientious objector.

As a conscientious objector, it would be my duty to take up work of national importance. This would consist of lumbering, farming, or whatever the case might be. If I wanted to give my occupation as an ordained minister and go to work as a farmer, I could do so at home, because my father farms 120 acres, and my father-in-law farms 600 acres. But, it is not my choice to do so. It is my choice to serve Almighty God as an ordained minister, and that is my only occupation. So, if I cannot go to work for my father or my father-in-law under the same reason as a conscientious objector, why should I give up my occupation as a minister?

MR. FEIGHAN: I ask that that be stricken from the record.

THE COURT: That portion will be stricken.

Q. That is, this tends toward argument, and I ask you to desist from such.

A. All right.

All the facts show that I am an ordained minister of the Gospel and I am fully exempt from work of national importance.

MR. FEIGHAN: May I ask that that be stricken as a conclusion and a statement?

THE COURT: Well, it borders on it, but I will let that part stand.

A. Never, at any time, did I accept the classification of IV-E, nor did I ever ask for such a classification. Such fact was plainly stated to the hearing officer for the Federal Bureau of Investigation, Frank X. Cull. When I received the classification of IV-E, on June 11, 1943, protest was made to the Local Draft Board concerning such a classification, and the local board simply sidestepped the question by stating—

MR. FEIGHAN: Now, I object, your Honor.

THE COURT: Yes.

Q. That is, about sidestepping, you may state what was said and done.

A. The local board said that if I wasn't satisfied with the classification—

MR. FEIGHAN: Your Honor, I object to him making the statement of what the board said. If he wants to say what the board did, it is agreeable.

THE COURT: If the board said it to him, it bears on his intent to violate the law. Now, what was it, what was said to you by the board, and who said it?

THE WITNESS: Said to me by various members of the board.

THE COURT: Well, who said it, and when, and what was said?

THE WITNESS: It was said immediately after my classification of IV-E was received on June 11, that if I was not satisfied with the classification of IV-E, I should take the matter up with the Appeal Board. But, they knew that the Appeal Board—

THE COURT: Now, just a minute.

MR. SCHMIDT: Yes, about what they knew, I will have to exclude that.

A. The draft laws plainly state, after the Appeal Board hands a decision, the case is again entirely up to the local board. No further action can be taken with the Board of Appeal.

Letters of protest were also sent to the Appeal Agent for the local board, but these did not receive any attention.

MR. FEIGHAN: I ask that be stricken also.

MR. SCHMIDT: Yes.

THE COURT: All right, that may go out.

A. Additional evidence was presented to the local draft board concerning my status as a minister, but I received

a notation that such did not warrant a reopening of my classification.

On February 10, 1944, I received an order to report for pre-induction physical examination on February 21, 1944, at the local board, and from there I was to be transported to the induction here at Cleveland, Ohio, for the Physical examination. I reported for such pre-induction physical examination. And on February 28, 1944, I received, from the local draft board, a certificate of fitness, stating: Physically fit, accepted for general military service, class IV-E.

On March 8, 1944, I received a questionnaire and other things from the National Service Board for religious objectors. On March 9, 1944, protest was made to the classification of IV-E to the local board, which letter is contained in my file.

On March 31, 1944, I received more information concerning a camp for religious objectors from the Civilian Public Service of the Mennonite Central Committee, Akron, Pennsylvania.

A protest was again made to the local board stating that I was not entitled to the classification of IV-E, but that of a minister, IV-D.

On April 8, 1944, I received an order to report for work of national importance on April 21, 1944. On the 19th day of April, 1944, protest was again made to the local draft board concerning the classification of IV-E, and which plainly stated that I was not entitled to a classification as a conscientious objector, but an ordained minister. It further stated that I could not report for work of national importance, as it would take me away from my occupation as a minister serving a congregation in Wooster, Ohio.

Q. Now, what course of study did you pursue in becoming a minister?

MR. FEIGHAN: Your Honor, I think we went over that in the morning's session.

MR. SCHMIDT: Your Honor, please, I don't believe that we did, because we outlined the schedule of his ministerial work, that is, for each day of the week, and so noted it. Now, this—

THE COURT: Well, wasn't that the question to which he answered that he went to a Methodist Church, and that is where he learned of the Bible, and that he got a book on

the Bible?

MR. SCHMIDT: No, if your Honor please. This is new, additional evidence, no part of which has ever been presented.

MR. FEIGHAN: The question was asked before, and he answered it at that time.

THE COURT: All right, he may answer it. Nothing will be lost by it.

MR. SCHMIDT: All right.

A. The course that I have studied, that I pursued to become a minister, consisted of many different subjects, such as: Gathering material for a sermon; how to use different Bible helps; the use of the Watchtower Bible helps in particular; need of an outline for a sermon; the construction of a sermon; then the delivery of a sermon, and the different methods of delivering a sermon; extempore speaking; how to use Concordances; the introduction of a sermon; developing the body of a sermon; different types of conclusions for a sermon—

MR. FEIGHAN: Your Honor, I don't like to object at this time, but I think we can facilitate matters. The Government is willing to stipulate that the Defendant claims to be a minister.

THE COURT: Well—

MR. SCHMIDT: It is hereby stipulated by the parties to this cause of action that we recognize the Defendant to be a minister of religion; and that the Defendant was a minister of religion at all times while he has been under the jurisdiction of the Selective Training and Service Act, and in accordance with the definition given in the regulations of the Selective Service and Training Act, namely, Regulation 622.44, defining such duly ordained minister.

THE COURT: That isn't what the Government had stipulated.

MR. SCHMIDT: Will the Government agree to that?

THE COURT: You are asking whether the Government will stipulate to that?

MR. FEIGHAN: No, the Government, definitely, will not stipulate to that.

I would appreciate it if the Court Reporter would read back what I said I was willing to stipulate.

(Record read.)

MR. SCHMIDT: Oh, that he claims to be a minister?

Well, that wouldn't preclude, or favor the Defendant by accepting that stipulation in lieu of the answer to this present question—

THE COURT: I am afraid it won't facilitate matters. We are just taking up that much time.

MR. FEIGHAN: I will withdraw the objection.

THE COURT: That last stipulation, dictated by Mr. Schmidt, goes out, Mr. Reporter.

MR. SCHMIDT: That is right.

Q. All right, you may continue stating the various subjects that you pursued in becoming a minister.

A. The last one, I believe, was different types of conclusions for a sermon. The oral emphasis in a sermon; gestures in delivering a sermon; use of the dictionary, and use of a Bible dictionary, and choice of words in a composition of a sermon; building a vocabulary; reasons for different Bible translations; sentence construction of a sermon; the variety of sentence construction in a sermon; God's Word on vital subjects that are contained in the Bible; need for argumentation; argumentation in a sermon; the evidence in argumentation; Watchtower Bible "Proper Names";

"Proper Names"; audience fear; modulation; poise; construction; how to study the "Watchtower"; refutation; coherence; non-Theocratic references; parts of speech;—

MR. FEIGHAN: I am going to object on the ground it is all immaterial, Your Honor.

THE COURT: Well, what are these? Are these just the various things that you think are essential in a sermon to be delivered? I understood the question put by your counsel to mean what course of study did you pursue? Now, did you pursue a course of study in each one of those?

THE WITNESS: That's right.

THE COURT: Where?

THE WITNESS: At home, and also—

THE COURT: Where? At some college, or some institution where you obtained that course of study, or is that just your method of classifying the various things that you are to pay attention to?

THE WITNESS: No, this is a course of study outlined by the Watchtower Bible and Tract Society.

THE COURT: Well, then, all this is—

Q. And furthermore, I will ask you this: Is this course of study noted, regularly pursued, and the subjects which you have stated, at the Kingdom Hall, in Wooster, Ohio?

A. Yes, it is.

Q. On what days, what day of the week, what time of the week?

MR. FEIGHAN: If your Honor please, I am going to make the objection again that I made this morning—

MR. SCHMIDT: I will withdraw that.

MR. FEIGHAN: On the same basis that none of these things are material, and that the claim of being a minister, not being a defense.

THE COURT: That is quite true. The original questions put by defense counsel to recite the reasons why he did not answer the call for induction to a camp of national importance. Now, to that extent, I will permit the testimony, to show intent and motive in refusing, or in committing the offense charged.

But now, you are going further, Mr. Schmidt. Now you are trying to prove the fact that he is a minister of the Gospel. The Government is willing to admit that he claims to be.

MR. SCHMIDT: I would refrain from arguing on that point, because I don't think that the admission of the claim would be sufficient, that is, on the part of the Government, to warrant anything in favor of the Defendant in maintaining his case. But, if the Government will stipulate that he is a minister, then that is a different thing.

MR. FEIGHAN: The Government, if it came to that, the Government would dismiss.

THE COURT: All right, ask your next question.

MR. SCHMIDT: We will ask the record to show an exception, and over the exception, if the Defendant were to continue, he would list these following ten subjects which were additionally pursued.

THE COURT: Well, if you want to dictate that into the record.

(Whereupon the following proceedings were had out of the hearing of the jury:)

MR. SCHMIDT: Non-Theocratic references; parts of speech; history of the Bible; the use of pronouns; the use of verbs; features of "The Emphatic Diaglott"; argu-

ments; impromptu speaking; advantages of exhaustive concordances; Theocratic tactfulness.

(Whereupon the following proceedings were had in the hearing of the jury:)

By Mr. Schmidt:

Q. Now, Mr. Dodez, when did you receive notice to report for final type physical examination?

A. On February 10, 1944.

Q. And when were you to report?

A. February 21, 1944.

Q. Did you report?

A. I did.

Q. Where did you go to take that physical examination?

A. The induction center in Cleveland, Ohio.

MR. SCHMIDT: I will ask this be marked for identification as Defendant's Exhibit B.

(Thereupon, the paper writing was marked for the purpose of identification Defendant's Exhibit B.)

Q. I will ask you, Mr. Dodez, what this is?

A. That is a certificate of fitness that I received from the local draft board.

Q. And does it bear the stamp of the local board?

A. Yes, it does.

Q. Under what date?

A. Date of February 21, 1944.

Q. And is there a specification thereon as to your physical condition?

A. There is.

Q. What is it?

A. Physically fit, accepted for general military service, I.V.E.

MR. SCHMIDT: I will ask, if your Honor please, that this be admitted in evidence on behalf of the Defendant.

MR. FEIGHAN: May I see the Exhibit, please?

MR. SCHMIDT: Yes, sir, pardon me.

MR. FEIGHAN: (Examines Exhibit.)

THE COURT: Received.

(Thereupon, the paper writing, previously marked for the purpose of identification Defendant's Exhibit No. B, attached hereto, was received in evidence, and made a part

thereof, as if fully rewritten herein.)

MR. SCHMIDT: That is all, Mr. Dodez.

CROSS EXAMINATION OF GEORGE WILLIAM DODEZ

By Mr. Fe'ghan:

Q. You stated that you are in charge of the congregation at the Kingdom Hall in Wooster, Ohio?

A. I am.

Q. And how many members are there in that group?

A. There is 102 associated with the Wooster church of Jehovah's witnesses.

Q. And how many of those people are ministers of the Gospel?

A. Myself, only.

Q. None of the other members have the card signed by Mr. Knorr?

A. Are you referring to the identification card?

Q. As ministers, yes.

A. This card (indicating).

Q. That type of card. Are you saying that none of the others in that group have that?

A. They do.

Q. How many of them have that?

A. Each individual.

Q. And that is the same as this document that you gave to the draft board showing that you were a minister, is that not correct?

A. That is incorrect.

Q. Did not you present one of them to the board?

A. I could not tell you.

Q. (Produces card.) Did you submit that to the board?

A. I believe that was submitted to the board.

Q. Is that your signature?

A. That is my signature.

Q. And you say that every member of your congregation has one of these?

A. That's right.

MR. FEIGHAN: Your Honor, I would like to have permission to read this to the jury. It is part of the evidence offered by the Defendant.

THE COURT: Well, now, it is not going to be too long?

MR. FEIGHAN: No, it will only take me a minute.

You are acquainted with this?

MR. SCHMIDT: That's right.

MR. FEIGHAN: This card is attached to some documents stating that the Defendant is a minister of the Gospel. This is marked "Exhibit B." It says (reading):

"To whom it may concern:

"This is to certify that—"

and in pencil, the name George Dodez—

"whose signature appears below, is an ordained minister of Jehovah God to preach the Gospel of God's Kingdom under Christ Jesus and that said person is one of Jehovah's witnesses. The Watchtower Bible and Tract Society, created and organized and chartered by law to preach the Gospel of God's Kingdom, sends forth Jehovah's witnesses to do this work as commanded by the Almighty God. Jehovah's witnesses are ordained and commissioned by God, and the signer of this card Scripturally claims such ordination and commission, as set forth in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matthew 10:7-12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; 1 Corinthians 9:16. Being one of Jehovah's witnesses, the signer must obey God rather than man. (Acts 3:23; Acts 4:19; Acts 5:29) Jehovah's witnesses, in obedience to God's Commandments, preach the Gospel and worship Almighty God by calling upon people at their homes exhibiting to them the message of the Gospel of said Kingdom in printed form. Bibles, books, booklets, and magazines are offered free to those that are poor, or on contribution, which contribution is accepted for the publishing of other literature so that the Word of the Lord may have greater circulation in all this world for a witness, giving other people the opportunity of learning of God's gracious provision for them. Said witness of Jehovah is doing this work of his own volition and is bearing the testimony before the people in accordance with the provisions of the fundamental laws of this land and in obedience to

God's Commandment, which is supreme. Any kindness shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46) The Society or its appointed representatives will be pleased to furnish authoritive proof as to whether the signer of this card is one of Jehovah's witnesses.

"Watchtower Bible & Tract Society.

"By N. H. Knorr, President."

And at the bottom is the name "George Dodez" in pencil, address "Apple Creek" in pencil, Ohio.

By Mr. Feighan:

Q. Every member of your congregation has one of these?

A. That is correct.

Q. Then every member of your congregation is a minister of the Gospel, is that correct?

A. In a limited way.

Q. In a limited way, but they are ministers of the Gospel?

A. That's right.

MR. SCHMIDT: Now, Mr. Dodez—Oh, pardon me.

MR. FEIGHAN: I am not through.

Q. How old are you, Dodez?

A. 22.

Q. 22?

A. That's right.

Q. Are you married or single?

A. Married.

Q. How long have you been married?

A. Little better than three years.

Q. Three years? And where do you live?

A. I live at Route 2, Orrville, Ohio.

Q. And do you carry on any other occupation than that of the one you claim?

A. No.

Q. And does your wife work?

A. No.

Q. Has your wife worked since you have been married?

A. She has.

Q. And do you have any income as a minister?

A. I have a slight income which pertains to voluntary contribution by certain individuals, which is an individual concern.

Q. What do you mean by an individual concern? You mean that your business as a minister is an individual concern?

A. No.

Q. What do you mean? You mean "concern" in the definition of a company, as a business?

A. No.

Q. What do you mean?

A. It is a matter that is entirely up to the individual himself.

Q. But your only means of livelihood is through your congregation, is that correct?

A. That's right.

Q. Now, you stated that you did not accept the classification of IV-E given to you by the board, is the correct?

A. That isn't correct.

Q. As far as you are concerned, it is up to you to accept the classification given by the board or refuse it?

MR. SCHMIDT: Well, your Honor please, I believe that that is objectionable.

THE COURT: Objection sustained.

Q. You did not accept the classification IV-E, did you?

MR. SCHMIDT: I believe, your Honor please, that has been answered by the Defendant.

THE COURT: I think it has been answered.

MR. FEIGHAN: I will withdraw it.

Q. You appeared at the induction center in Cleveland?

MR. SCHMIDT: Your Honor please, I believe that that has been answered.

THE COURT: Yes, I think you went over it several times.

Q. Did you receive an order to report for work of national importance?

MR. SCHMIDT: I believe, your Honor, that he answered that.

THE COURT: Not on cross examination.

MR. SCHMIDT: That is right.

Q. Did you receive an order to report for work of national importance?

A. I did.

Q. Was that order sent to you?

A. It was.

Q. On April 8, 1944?

A. That's right.

Q. And you were to report on April 21?

A. That's right.

Q. Did you report on that day?

A. Not on that day.

Q. That was the day that the order shows, April 21?

A. That's right.

Q. And you did not report on that day?

A. Not on that day. I reported on April 19 by registered letter.

Q. And what did you tell the board?

A. I reported by registered letter to the local draft board.

Q. And what did you report?

A. The contents—it is contained in my file.

Q. I am asking you.

A. If you will show me it, I will read it.

THE COURT: Now, wait a minute. I am going to tell you right now to answer the questions. This is a trial in a court of the United States, and I don't want flippant answers. You answer the questions.

MR. SCHMIDT: Your Honor please, this reply is in the file, I believe.

THE COURT: Yes, I understand it is. He may answer, he knows what he answered. If he wants the copy of the reply, he can state it definitely and in its entirety, but I don't want any flippant answers.

THE WITNESS: Yes, sir.

MR. FEIGHAN: Would you read the question back, please?

(Question read by the Reporter.)

A. May I have the letter?

THE COURT: Now, do you know what you reported, independently of the letter?

THE WITNESS: Approximately.

THE COURT: Well, all right, tell us what you did, and we will show you the letter then.

THE WITNESS: I reported to the local draft board that I was not a conscientious objector, but an ordained minister of the Gospel. And I presented to the local draft board indisputable evidence that I was a minister, and as a minister I was fully engaged in preaching to the—to a congregation, and I could not give up such work for work of national importance.

Q. That was by registered letter?

A. That's right.

Q. On April 21 did you appear personally at the board headquarters in answer to the order to report for work of national importance?

A. No.

MR. FEIGHAN: That is all.

REDIRECT EXAMINATION OF GEORGE WILLIAM DODEZ

By Mr. Schmidt:

Q. Are there any individuals in the congregation over which you preside that are a minister in the same sense that you are?

A. No.

Q. Is there any individual that is empowered to preside over the congregation other than yourself?

A. No.

Q. And is there any other individual that is empowered to represent the Watchtower Bible & Tract Society in a ministerial manner of control and disposition of the business of the Wooster Company of Jehovah's witnesses?

A. There is not.

Q. Did you receive an authorization from the Watchtower Bible & Tract Society embracing the special ministerial duties and functions which you have just described?

A. I did.

Q. And did you file such a letter with your local board?

A. I did.

Q. Would you recognize that letter if it were shown to you?

A. Yes.

Q. (Refers to file.)

A. This here is the letter concerning. (Indicating.)

Q. Did you file with the members of the Local Draft Board No. 2 of Wayne County, Orrville, Ohio, notice that you had received the appointment as company servant of the Wooster, Ohio Company of Jehovah's witnesses?

MR. FEIGHAN: I object. This is redirect examination, and he is going into new matter, I believe.

THE COURT: Well, technically speaking, he wouldn't be permitted to do it. I will permit him to ask that question.

MR. SCHMIDT: All right.

Q. Did you?

A. Yes.

Q. Is this the letter that was addressed to them?

THE COURT: Is that part of the file that you offered, Mr. Schmidt?

MR. SCHMIDT: Yes.

THE COURT: Well, it is evidence, is it not?

MR. SCHMIDT: Yes.

THE COURT: That is one of those letters which you had pointed out and marked as A-1, 2, 3 and 4, and so forth?

MR. SCHMIDT: No.

THE COURT: Well, mark that whatever the succeeding number is, and point out to the jury what it is.

MR. SCHMIDT: I will ask that this be specially designated Defendant's Exhibit C.

THE COURT: Well, wait a minute, that is part of the file, isn't it?

MR. SCHMIDT: That is right.

THE COURT: Well, it ought to be marked—the entire file is "A", isn't it?

MR. SCHMIDT: That is right.

THE COURT: It ought to be A-6 or 7, whatever it is.

THE CLERK: The next number would be A-8.

(Thereupon, the paper writing was marked for the purpose of identification Defendant's Exhibit A-8.)

THE COURT: Those are the matters specifically called to the attention of the jury.

MR. SCHMIDT: That is right. I will offer it in evidence.

THE COURT: Well, that was all received as part of the file.

MR. SCHMIDT: Yes.

THE COURT: And I have received them as part of the files in the Selective Service Board. They appear as part of the file.

(Thereupon, the paper writing, previously marked for the purpose of identification Defendant's Exhibit A-8, attached hereto, was received in evidence and made a part hereof, as if fully rewritten herein.)

Q. Now, I will also ask whether or not this is a photostatic copy of your appointment by the Watchtower Bible & Tract Society as an Evangelist minister in specially assigned territory?

A. It is.

Q. Marked Defendant's Exhibit A-1?

A. That is right.

Q. Now, how many in your congregation have the assignment from the Watchtower Bible & Tract Society as Company Servant?

MR. FEIGHAN: I object.

A. No one, besides—

MR. FEIGHAN: Your Honor—

THE COURT: Well, I think you asked him the question if there are others, Mr. Feighan.

Q. How many are there in your congregation that have the assignment from the Watchtower Bible & Tract Society as Company Servant?

A. I am the only one.

MR. FEIGHAN: Your Honor, I object to that. I didn't ask that all. I asked how many ministers there were, not Company Servants.

THE COURT: Well, you have covered it now, haven't you?

Q. Now, is the Company Servant the presiding minister?

A. He is.

MR. FEIGHAN: I object, that is putting new material

in redirect examination. This is not time to bring it out. You should have brought that out on your direct examination.

THE COURT: Well, the question has been answered, and I am not going to go over it again. Let us get along.

Q. How many in your congregation have the Pioneer assignment, if you know?

A. Well, that particular letter, I am the only one that has that particular.

THE COURT: You haven't answered the question. How many are there?

Q. How many are there with Pioneer assignments in your congregation?

A. There are three with Pioneer assignments.

Q. And you are one of them?

A. I am.

Q. And do you have supervision as Company Servant over these other two?

A. I do.

Q. Then you say there is nobody else in your congregation with the same ministerial status as you?

A. No one else.

MR. SCHMIDT: If your Honor please, I should bring a matter to the attention of the Court out of the presence of the jury, and then, as far as we are concerned, we are finished with the case.

THE COURT: Well, all right. You have presented this rather voluminous document to me, anyhow. At least I will have something to do over the weekend. It is a sizeable document. I will have to look it over. I told the jury that we would adjourn at this time, anyhow.

MR. FEIGHAN: Your Honor, may I ask one question?

MR. SCHMIDT: Oh, pardon me.

THE COURT: Well, do you want to ask it now, or Monday?

MR. FEIGHAN: I would rather ask it now.

THE COURT: All right, go ahead.

RECROSS EXAMINATION OF GEORGE WILLIAM DODEZ

By Mr. Feighan:

Q. This Exhibit, Defendant's Exhibit A-1, which Mr. Schmidt just asked you about in regard to your ministry, you said that this was a photostatic copy?

A. That's right.

Q. This letter, originally, is a mimeographed letter, is that correct?

A. It is a mimeographed letter, but it is signed by a pen in T. J. Sullivan's own signature.

Q. But the letter is mimeographed, with places on it to write in your name, and the date of baptism, and the date of ordination, is that correct?

A. That is correct.

MR. FEIGHAN: That is all.

THE COURT: Ladies and gentlemen of the jury: As I promised you, I am going to let you go early so that those of you who want to return to your homes may have an opportunity to do it in time, over the weekend. Now, during the adjournment until Monday, you will observe the admonition that the Court has repeated to you on several occasions. The Baliff will adjourn Court until 10:00 o'clock Monday morning, this case to be adjourned until 10:00 o'clock Monday morning.

(Whereupon an adjournment was taken in the above-entitled matter until Monday, December 11, 1944, at 10:00 o'clock, a. m.)

MONDAY, DECEMBER 11, 1944, 10:00 O'CLOCK, A. M.

(Whereupon, the above-entitled cause came on for further hearing, pursuant to adjournment, and the following further proceedings were had:)

APPEARANCES:

Same as before.

THE COURT: You may proceed, gentlemen.

MR. SCHMIDT: Pursuant to adjournment, I will ask Mr. Dodez to resume the witness stand for a few questions.

REDIRECT EXAMINATION OF GEORGE WILLIAM DODEZ

By Mr. Schmidt:

Q. You are the same George William Dodez that was on the stand when we adjourned?

A. That is right, yes.

MR. SCHMIDT: I will ask that this be marked for identification Defendant's Exhibit C.

(Thereupon, the paper writing was marked for the purpose of identification Defendant's Exhibit No. C.)

Q. Now, Mr. Dodez, I will ask you what this is?

A. This is a letter or communication from the Watchtower Bible and Tract Society, Brooklyn, New York, appointing me as direct representative of the Society in the City of Wooster, Ohio.

Q. Does it state in what capacity you are?

MR. FEIGHAN: Your Honor, I object. The Defendant is going into new material.

THE COURT: What is this, redirect examination?

MR. SCHMIDT: This is direct examination.

THE COURT: You haven't had him on cross examination?

MR. FEIGHAN: Yes, Your Honor.

MR. SCHMIDT: That is, he has had the opportunity to have cross, I would like to have Mr. Dodez testify now on redirect examination.

MR. FEIGHAN: Your Honor, this is re-redirect examination.

MR. SCHMIDT: Then if it is on re-redirect, I would like to have him at this time—

THE COURT: Well, all right, I don't understand why that instrument wouldn't speak for itself, if you are going to offer it, his interpretation of what it is is certainly not competent.

MR. SCHMIDT: Now, I will ask that this be made a part of the Defendant's Evidence in this case.

THE COURT: What is it?

MR. FEIGHAN: You are proffering it at this time?

MR. SCHMIDT: Yes.

THE COURT: (Examines document.)

All right.

MR. FEIGHAN: Your Honor, I object to the introduction of that at this time, and also on the ground that it is not material to the case.

MR. SCHMIDT: Your Honor, please, I believe the objections come too late.

THE COURT: Why?

MR. SCHMIDT: I understood the Court to say, "All right." By that I understood that it was admissible and was admitted in evidence.

THE COURT: Well, I didn't so intend to say it. I will rule on it. I will admit it. Let us get it over.

(Thereupon, the paper writing previously marked for the purpose of identification Defendant's Exhibit No. C, attached hereto, was received in evidence, and made apart hereof, as if fully re-written herein.)

Q. Now, Mr. Dodez, are you the managing agent of the Watchtower Bible and Tract Society of the City of Wooster, Ohio, and the surrounding territory?

A. I am.

Q. And as such managing agent, do you have the facts at hand as to the number and the kinds of ministers recognized by the Watchtower Bible and Tract Society, do you have them available?

A. I do.

THE COURT: Well, now, this is redirect examination. Now, how long are we going to go on? Are you going to start something new, or are you going to start something else? You finished your case when you said you were through with this witness and he was taken on cross examination. I will permit redirect examination, but let us not get into any new matters.

MR. SCHMIDT: I hope to finish this in two minutes, if Your Honor please.

Q. Would you mind relating to the Court and jury the number of companies recognized by the Watchtower Bible and Tract Society, or the number of congregations in the United States?

A. As of September 1, 1943, there were 3,227 churches of Jehovah's witnesses in the United States.

Q. And do you have any record or information as to the number of the various classes of people affiliated with, and the ministers that are associated with Jehovah's witnesses?

A. I do.

THE COURT: Well, now just a second. You are again assuming, in your question, when you say, "Ministers," now, that is a question that Congress has decided. This witness cannot testify as to who is and to who is not a minister.

MR. SCHMIDT: If Your Honor please, I believe that he can testify as to those who are designated by the Watchtower Bible and Tract Society as ministers.

THE COURT: That is not the way the question is put.

MR. SCHMIDT: I will reframe it, then.

Q. Would you mind relating to the Court and the jury the statement relative to the individuals affiliated with the Watchtower Bible and Tract Society, and the number of the witnesses in the various capacities as recognized by the Watchtower Bible and Tract Society?

A. Well, there are millions of people that are affiliated with the Watchtower Bible and Tract Society, and such are sympathetic with the teachings of such Society, but these are—there is no exact number kept, or any record kept, as such are not all ministers of the Watchtower Bible and Tract Society. But, from information that is given to me each month, a monthly bulletin, published by the Watchtower Bible and Tract Society, there are, in the local church organizations, 57,879 individuals who devote under 150 hours per month—

THE COURT: Let us not get into that, now. You have asked him the question. Let him answer it. He doesn't have to go into a long-winded explanation. Just answer the question.

MR. SCHMIDT: Pardon me. I believe that the Court and jury are entitled to know about these 57,00 individuals, as to what capacities they occupy. I want to be as short as possible, but we want to know, in order to distinguish this class of individuals from the other group of individuals.

A. Well, these individuals devote a part of their time in publishing the Message of Almighty God in the territory that they are assigned by the local church organization. But, then, there are affiliated with the Watchtower Bible and Tract Society, 3,168 what are known as general Pioneers. These devote 150 hours and more of their time in preaching the Gospel of the Kingdom; of which group I am classified under. But, there are also another group of

1,334, which are known as Special Pioneers. Now, these are sent by the Society to territory that the Society might designate, and are subject to changing from time to time—

MR. FEIGHAN: Your Honor, I am objecting to this. He said two minutes.

THE COURT: Objection sustained.

MR. SCHMIDT: Exception.

THE COURT: This is redirect examination. You have had your opportunity. This isn't redirect examination.

MR. FEIGHAN: I ask that that all be stricken also.

THE COURT: Well, it has gone in, let it stand.

Q. One more question.

Concerning the number of the various classes of ministers that you have stated, what is the date on which these figures existed?

A. The figures concerning the number of different classes were taken as of November, 1944.

MR. SCHMIDT: That is all.

MR. FEIGHAN: No cross examination.

THE COURT: Step down.

(Witness excused.)

MR. SCHMIDT: At this time, may it please the Court, the Defendant presents a renewal of the motion to dismiss.

THE COURT: Have you rested, Mr. Schmidt?

MR. SCHMIDT: Yes, we are resting the case.

THE COURT: All right.

MR. SCHMIDT: If there is no rebuttal on the part of the Government.

MR. FEIGHAN: No, no rebuttal.

MR. SCHMIDT: Then the Defendant presents a renewal of his motion to dismiss, and also a renewal of his motion for a directed verdict and judgment of acquittal.

THE COURT: Is that the same as was presented at the end of the Government's case?

MR. SCHMIDT: No, there are additional matters presented in each motion. Copies of the motions have been presented to the District Attorney.

THE COURT: (Examines document.) Both of the motions will be overruled.

MR. SCHMIDT: To which the record will respectfully show an exception.

THE COURT: All right.

THEREUPON THE DEFENDANT RESTED.

THEREUPON THE GOVERNMENT RESTED.

TESTIMONY CLOSED.

THE ABOVE AND FOREGOING TESTIMONY, TOGETHER WITH THE EXHIBITS HERETO ATTACHED AND MADE A PART OF THIS BILL OF EXCEPTIONS, WAS ALL OF THE EVIDENCE OFFERED AND/OR RECEIVED ON BEHALF OF THE PLAINTIFF AND/OR THE DEFENDANT, UPON THE TRIAL OF THE ABOVE-ENTITLED CAUSE IN SAID UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

REQUESTS TO CHARGE BEFORE ARGUMENT

The following are the Defendant's requested special instructions presented to the Court and a copy thereof to the counsel for the Government at the outset of the trial:

DEFENDANT'S REQUESTED SPECIAL INSTRUCTIONS 1 TO 48

Comes now the defendant after the close of all the evidence and before argument is offered to the jury and herewith presents his special instructions and requests the Court to give separate consideration to each instruction, to make a separate ruling on each instruction and to read each instruction in his general charge to the jury.

The defendant reserves an exception to each and every adverse ruling of the Court whereby any of the defendant's requested special instructions are excluded from the general charge of the Court to the jury.

In compliance with the case law of the Supreme Court of the United States in order to preserve the rights of record for the defendant, the Court will here take notice that after the general charge has been given and before the jury retires for deliberation the defendant renews each of his requested special instructions which was previously refused, again requests a separate ruling on each of said refused instructions, again requests that each refused instruction be given in a supplemental charge to the jury, and the defendant reserves an exception to each adverse ruling by which any of defendant's requested special instructions have been refused the second time.

(S) VICTOR F. SCHMIDT
Victor F. Schmidt,
8469 Pine Road,
Rossmoyne, Ohio,
Attorney for Defendant.

AUTHORITIES ON REQUESTED SPECIAL INSTRUCTIONS

Campanelli v. United States, 13 F 2d 750.
Morrow v. United States, 11 F. 2d 256.
Baker v. United States, 21 F. 2d 903.
Thiede v. Utah, 159 U. S. 110.
Beaver v. Taylor, 93 U. S. 46, 54.
Allen v. United States, 4 F. 2d 688.
United States v. U. S. Fed. Co., 236 U. S. 520.

REQUESTED SPECIAL INSTRUCTION NO. 1

You are instructed, members of the jury, that this indictment is brought under Section 311 of Title 50 of the United States Code known as the Selective Training and Service Act of 1940 as amended wherein it is provided that "Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . shall, upon conviction in the District Court of the United States having jurisdiction thereof, be punished . . ."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 2

You will note, members of the jury, that the Selective Training and Service Act of 1940 as amended differs from the law of 1917 by which the army in World War I was raised in this respect: Section 157 of the Regulations under the 1917 Act provided "From and after the day and hour thus specified each registrant shall be in the military service of the United States." The only step necessary to invoke military jurisdiction under the former act was that when the time came for the registrant to report he was under military jurisdiction. Under the former act of 1917 after the registrant has been automatically inducted into the United States Army there was only one place where he could be tried, and that was by court martial proceedings in the United States Army. Under the present arrangement and Act of 1940 the violator of the present law is accorded a criminal trial in the United States District Court having jurisdiction before actual induction.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 3

You are instructed, members of the jury, that Congress under the Selective Training and Service Act of 1940 as amended made provisions for the prosecution of the violator of the said Act before actual physical induction, exclusively in the United States District Court having jurisdiction upon a charge specified by indictment in a criminal action; whereas under the 1917 Act of Congress the only place that the offender of the prior Act could be tried was before a military court martial proceedings after the accused was automatically in the army.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 4

You are instructed, members of the jury, that under the Selective Service Act of 1917 after the registrant violator thereof was automatically inducted into the United States Army and desired affirmative relief he had to resort to a proceedings in habeas corpus whereby his defenses could be raised and the actions of the draft boards might be

reviewed. Under the present Selective Training and Service Act of 1940 as amended Congress did not limit the relief of the registrant violator of the Act to habeas corpus proceedings; in fact the action of habeas corpus is not even mentioned or suggested in the Act of 1940. Therefore, since this is a criminal action authorized by Congress, in a case of this kind, you will accord the defendant the same rights and privileges under Article Three and the Fifth and Sixth Amendments to the Constitution of the United States that you would accord a defendant in any other criminal action.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 4-A

To what extent the individual registrant must go in order to exhaust his administrative remedies before he may challenge the legality of his classification in the courts, you members of the jury, will be guided by the words as follows (Billings v. Truesdell, 321 U. S. 542):

"Moreover, it should be remembered that he who reports at the induction station is following the procedure outlined in the *Falbo* case for the exhaustion of his administrative remedies. Unless he follows that procedure he may not challenge the legality of his classification in the courts. But we can hardly say that he must report to the military in order to exhaust his administrative remedies and then say that if he does so report he may be forcibly inducted against his will. That would indeed make a trap of the *Falbo* case by subjecting those who reported for completion of the Selective Service process to more severe penalties than those who stayed away in defiance of the board's order to report.

"These considerations together indicate to us that a selectee becomes "actually indicted" within the meaning of Section 11 of the Act when in obedience to the order of his board and after the Army has found him acceptable for service he undergoes whatever ceremony or requirements of admission the War Department has prescribed.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 4-B

Since "acceptance or being found acceptable" for service is prerequisite before exhaustion of administrative remedies, you will be guided by the following words (Billings v. Truesdell, 321 U. S. 542):

> "We mention these recent regulations because they perpetuate the distinction between acceptance or being found acceptable and induction which appeared in the regulations when Billings reported at the induction station. That these amendments do not effect any change in the concept of "induction" is apparent from the fact that its definition has remained practically the same from the time when Billings reported at the induction station to the present time. It could hardly be maintained that a selectee who had passed his pre-induction physical examination but who has not been ordered to report for induction is subject to military jurisdiction. And it would not seem permissible to hold that he who failed to report for induction at the end of the so-called twenty-one day furlough period could be prosecuted by a court martial because he had been "actually inducted" within the meaning of Sect. 11. But if that is true, it is difficult to see why there would be a difference in result if the interval between the time when he is found acceptable or is accepted and the ceremony of induction were only a few minutes, as in the present case, rather than a few weeks.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 4-C

In order to determine who are and who are not "acceptable for service" you will consider the following words taken from Section 3 of the Selective Training and Service Act of 1940, which according to Section 16 (a) of said Act suspends all laws or parts thereof which are in conflict with its provisions:

> "No man shall be inducted for training and service under this act unless or until he is acceptable to the land or naval forces for such training and service and his physical and mental fitness for such training and service has been satisfactorily determined."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 4-D

Since the Supreme Court of the Nation on March 27, 1944, in the Billings v. Truesdell case, 321 U. S. 542, held,

> "But we can hardly say that he must report to the military in order to exhaust his administrative remedies and then say that if he does so report he may be forcibly inducted against his will. That indeed would make a trap of the *Falbo* case by subjecting those who reported for completion of the Selective Service process to more severe penalties than those who stayed away in defiance of the board's order to report."

One need not be restrained by the military to challenge the legality of his classification in the courts. One need not be illegally restrained of his liberty in the military in order to raise his defenses. One need not have to resort to proceedings in habeas corpus to challenge the legality of his classification by the local board.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 4-E

Since "acceptability for service" after taking the preinduction physical examination marks the exhaustion of the administrative remedies in order to test the legality of classification by the local board,—if you find from the evidence that the defendant has been found acceptable for such service after taking his preinduction physical examination, then you will consider all evidence relative to his classification.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 4-F

If from all the evidence in the case you find that the defendant has been found acceptable for service as the result of his having taken the preinduction physical examination at the induction station, then he has exhausted his administrative remedies and you will accord him the right to all defenses usually accorded the accused in a criminal action but consonant with his legal rights under the Selective Training and Service Act of 1940.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 5

Under the general law of the land, members of the jury, in a criminal action and in accordance with Article Three of, and the Fifth and Sixth Amendments to the Constitution of the United States a full hearing must be accorded to the defendant. He must be permitted to offer and present his defenses in evidence and you must give due consideration to his defenses before there is a just conviction or acquittal.

Likewise you will give due consideration to all of the facts admitted in evidence as presented by the Government and give due consideration thereto.

It is only after a consideration of all of the evidence on both sides, accepted under the general rules of evidence governing criminal trials in the Federal Courts, that you can reach a just verdict; and you are the sole arbiters of that evidence relative to the facts in the case.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 6

All persons between the ages of 18 and 45 are subject to the Selective Training and Service Act of 1940 and are liable for training and service thereunder at such time and in such manner as the Selective Service System may prescribe for him unless he is exempt from all training and service by the Act itself. The only persons exempt by Congress from training and service are "regular or duly ordained ministers of religion, and students preparing for the ministry" (Sec. 5 (d). If a man is a "regular or duly ordained minister of religion" at the time of registration and classification, there can be no duty imposed upon him under the Act and if ordered by a local draft board to do training and service under the Act, his failure and refusal to respond to such an order does not constitute a violation of the Act, because he has been exempted from the provisions of the Act.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 7

In determining whether or not the defendant in this

particular case is a minister of religion, you must consider first the provision of the Selective Training and Service Act of 1940 for the exemption.

Section 5 (d) of the Act provides: "Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

If you find and believe from the evidence, or if you have a reasonable doubt thereof, that the defendant at the time of his classification was a "regular or duly ordained minister of religion" and this fact was made known to the draft boards, you must acquit the defendant and by your verdict say, "Not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 8

It will be observed that the Selective Training and Service Act of 1940 employs the terms "regular or duly ordained ministers of religion." The Selective Service Regulations duly promulgated by the President of the United States through the Director of Selective Service in Section 622.44 (a) provides: "In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940)."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 9

The defendant claims that he is a "duly ordained minister of religion" and so states in his Selective Service questionnaire filed with the local draft board. The Selective Service Regulations define a "duly ordained minister of religion" in section 622.44 (c) as follows: "A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious organization, to

teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties."

If you find that the defendant was a "duly ordained minister of religion" and this fact was made known to the draft boards, or if you have a reasonable doubt thereof, you will acquit the defendant and by your verdict say, "Not guilty."

In the event you find that the defendant is not a "duly ordained minister of religion," before you can indicate a verdict in this case, you must next determine whether the defendant is a "regular minister of religion." The Director of Selective Service defines the term "regular minister of religion" in Section 622.44 (b) as follows: "A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister."

If you find that the defendant was a "regular minister of religion" and this fact was made known to the draft boards before the classification, or if you have a reasonable doubt thereof, you will acquit the defendant and by your verdict say, "Not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 10

You are advised that ministers of religion are entirely exempt from training and service under the Selective Training and Service Act of 1940 and Amendments, and that the draft boards have no jurisdiction to order ministers of religion to perform any duty. If you find and believe from the evidence that the defendant is a minister of religion and so informed the draft boards before his last classification and that the draft boards had no evidence in writing in defendant's Cover Sheet and file that he was not such minister, or if you have a reasonable doubt thereof, then the local draft board had no authority to order him to report and you must acquit the defendant and by your verdict say, "Not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 11

You are instructed that the law requires the local board to set out in writing and place in the defendant's file at the time of classification a record of all the facts and evidence considered by it in arriving at its determination. Section 623.2 of the Selective Service Regulations provides:

> "Information considered for classification. The registrant's classification shall be made solely on the basis of the Selective Service Questionnaire (Form 40), Affidavit of Dependent Over 18 Years of Age (Form 40A), Affidavit—Occupational Classification (General) (Form 42), or Affidavit—Occupational Classification (Industrial) (Form 42A), and such other written information as may be contained in his file; provided, however, when a registrant has failed or hereafter fails to return his Selective Service Questionnaire (Form 40) within the time allowed by section 621.2 or when he has failed or hereafter fails to provide the local board with any other information concerning his status which he is requested or required to furnish, the local board shall proceed with his classification without such information. Oral information should not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances should the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file."

Particularly in reference to the classification of all of Jehovah's witnesses, the Director of Selective Service has stated in his Opinion No. 14 (as amended Nov. 2, 1942):

> "In the case of Jehovah's witnesses, as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision." (Paragraph 6).

If you find and believe from the evidence that the only documents considered by the draft boards were the Selective Service Questionnaire and other written documents that have been introduced before you which were taken from the local board's file of the defendant, and you find

that there was no other written evidence in his file which disputed his claim and which proved that he was falsifying and factitiously claiming to be a minister, then you are instructed that the draft boards had no authority or jurisdiction to order the defendant to report; and if you find such facts or have a reasonable doubt thereof, you will acquit the defendant and by your verdict say, "Not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 12

In determining whether or not there was any written evidence before the draft boards that the defendant was not a minister of religion, you cannot and will not consider the opinions and statements in letters or communications between the various officers of the Selective Service System. By evidence is meant affidavits, statements of witnesses, or written memoranda of information or testimony actually provided the local board. The opinions expressed by members of the Selective Service System in passing upon defendant's classification cannot be considered by you in arriving at your verdict. If there are any such expressions of opinion in the evidence, you are to disregard them entirely because the Selective Service Regulations (Section 627.13 (a) provides:

> "Immediately upon an appeal being taken to the board of appeal, the local board shall carefully check the registrant's file to make certain that all steps required by the regulations have been taken and the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts. In preparing such a summary the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision."

and Section 628.4 of the Regulations, in connection with the taking of an appeal to the President says:

> "The local board shall not place in the file any statement or expression of opinion concerning the information in the registrant's file or the reasons for its decision."

And particularly in reference to the classification of all of Jehovah's witnesses, the Director of Selective Service has stated in his Opinion No. 14 (as amended Nov. 2, 1942);

> "In the case of Jehovah's witnesses, as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision." (Paragraph 6)

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 13

In determining whether or not the defendant is a regular or duly ordained minister of religion, if there is no evidence impeaching the defendant's claim and if the registrant's file at the local board does not contain evidence to prove that the defendant was factitiously claiming to be a minister or was in fact a minister of Jehovah's witnesses, then you are instructed that the draft boards had no discretion or authority to say that defendant was not entitled to exemption provided by Section 5 (d) of the Selective Training and Service Act and to classification as a minister of religion, class IV-D.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 14

The draft boards are fact finding bodies and have no right to set up their own conception of what the qualifications for ministers of any religious organization should be, but must recognize that each sect, church or organization (including Jehovah's witnesses) have the right to determine the qualification of their ministers, and draft boards can consider only whether or not a particular registrant has qualified as one of such ministers.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 15

There is not, and cannot, be a fixed unalterable ceremony

or definition for ordain, ordained or ordination. To limit or restrict ordination to some special form or ceremony employed by the orthodox religions would discriminate between the diversified modes and forms of ordination practiced by the various religious organizations. The law makes no discrimination in any respect between religious sects, cults, denominations, churches or organizations and much less does not attempt to prescribe any form or mode of ordination for the ministers of any organization. Any and all persons who can prove to the satisfaction of the court and jury that they have been duly appointed or recognized in the manner required by the regulations of their respective organization or denomination and are devoting themselves generally to the work of officiating and ministering in the interests and affairs of such religious organizations or bodies may be found to be ordained ministers. The methods employed by the orthodox, recognized religious sects cannot be employed as a guide in determining whether Jehovah's witnesses and the defendant are ordained ministers.

The words ordained and ordain mean "to establish by appointment, to appoint or establish." The important sense of the terms according to McClintock and Strong's "The Cyclopedia of Biblical, Theological and Ecclesiastical Literature" is:

> "The ceremony by which an individual is set apart to an order or office of the Christian ministry . . . In a broader, and in fact its only important sense, . . . the appointment or designation of a person to a ministerial office, whether with or without attendant ceremonies. The term ordination is derived directly from the Latin *ordinatio*, signifying, with reference to things or affairs, a setting in order, an establishment, an edict, and with reference to men, an appointment to office . . . A scriptural investigation of this subject can hardly fail to impress any ingenious mind with the great significance of the fact that neither the Lord Jesus Christ nor any of his disciples gave specific commands or declaration in reference to ordination." (p. 411)

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 16

The defendant claims to be ordained. He says that the

ceremony attendant to his ordination was by water immersion or baptism publicly. He says that upon his baptism after entering into a covenant to serve Almighty Jehovah God, he thereby became ordained to preach "this gospel of the kingdom." He claims to be ordained by Jehovah God and, as his authority, relies upon the scriptures at ISAIAH 61: 1, 2, which reads: "The Spirit of the Lord GOD is upon me; because the LORD hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; To proclaim the acceptable year of the LORD, and the day of vengeance of our God; to comfort all that mourn." Defendant also claims that this ordination from Jehovah God is recognized by and certified to by the earthly governing body of Jehovah's witnesses, the Watchtower Bible and Tract Society, Inc., which has issued to him credentials of ordination. This evidence is not impeached or contradicted by the Government and it cannot be disregarded by you in arriving at your verdict. The jury cannot substitute their private opinion as to what constitutes ordination or who is an ordained minister, nor can the jury gauge and judge the wisdom and propriety of the ordination and mode of preaching employed by the orthodox clergy a means of determining whether or not the defendant is entitled to the exemption as a minister of religion provided for in Section 5 (d) of the Selective Training and Service Act.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 17

It is not necessary to be an ordained minister of religion to be entitled to Class IV-D or to be exempt from training and service under the Selective Training and Service Act, but a person who customarily preaches and teaches the principles of religion of a recognized church, sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect or organization as a minister, is entitled to such IV-D classification and exemption, and Jehovah's witnesses are officially recognized by National Headquarters of Selective Service System as a religious sect or organization so that its ministers are entitled to consideration as ministers of religion just as ministers

of any church denomination, and that no discrimination is permitted either under the Act of Regulations.

In this country under the Constitution of the United States every man has the right to worship God or refuse to worship, according to the dictates of his own conscience, and hold any view or opinion in respect thereto, and express the same to others and carry out such view by practices, without molestation, direction, dictation, or interference from officials or others, so long as such practices resulting from such belief do not involve a violation of morals or invade the property rights of others. You will therefore not consider the fact that Jehovah's witnesses, of whom the defendant is one, declare and distribute literature which attacks the religions or religious beliefs of others in arriving at your verdict.

If you find that the defendant at the time of his classification customarily preached and taught the principles of the beliefs of Jehovah's witnesses and was a member of Jehovah's witnesses and that the governing body of Jehovah's witnesses, the Watchtower Bible & Tract Society, Inc., recognized him as a minister and that from the facts presented to the local board reasonable men could not have found otherwise, you will acquit the defendant, by your verdict say "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 18

You are instructed that in the realm of religious faith, sharp differences arise. In the field of religious faith,

> "the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to villification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." (310 U. S. 296)

And Congress, in recognition of this declaration of faith in religious liberty, has exempted under the Selective Train-

ing and Service Act of 1940, any "regular or duly ordained ministers of religion, and students who are perparing for the ministry."

The Court instructs you that the "essential characteristic of religious freedom is that under its shield may types of life, character, opinion and belief can develop unmolested and unobstructed. No where is this shield more necessary than in our own country for a people composed of many races and of many creeds." The Court further instructs you that there are limits to the exercise of that freedom.

You will not consider the fact that Jehovah's witnesses, of whom the defendant is one, declare and distribute literature which attacks the religions or the religious beliefs of others, in arriving at your verdict.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 19

You are instructed that a minister of religion is exempt from duty of training and service under the Selective Training Service Act of 1940. If you find that the papers filed by the defendant with the local board showed that defendant was a minister of Jehovah's witnesses and the Watchtower Bible and Tract Society, Inc., of Brooklyn, New York, and there was no evidence before the draft boards to show that he was not acting in such ministerial capacity, then, in such event, the draft boards had no jurisdiction to order the defendant to report, the order to report would be void, it would not impose any duty upon the defendant, and accordingly, you will acquit the defendant and by your verdict say "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 20

You are instructed that, in passing upon the issue of defendant's ordination, "ordain" means "to establish by appointment" or "to appoint or establish." An ordained minister is one who has been duly appointed or recognized in the manner required by the Selective Service Regulations of his particular denomination or officiating and ministering in the interests and the affairs of such organiza-

tion. In other words, it means an appointed minister. An ordination is not confined to any particular kind of ceremony or formalism. It cannot be required that the defendant show that he performs functions normally performed by other regular ministers of orthodox religious organizations and that defendant is recognized by other of Jehovah's witnesses in the same manner in which the regular or duly ordained ministers of orthodox recognized religious sects and organizations are regarded. Among the various religious sects, churches and organizations uniform standards and practices cannot be required or enforced. What is considered salvation for one is considered damnation by the other. The policy or practice of orthodox recognized ecclesiastic organizations cannot be used as a rule to determine and measure the propriety or action of dissentient groups.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 21

To be a regular minister of religion one need not be ordained as you have been heretofore instructed . . . Section 5 (d) of the Selective Training and Service Act providing exemption for ministers of religion does not grant such exemption on the basis of some particular form, ceremony or practice. The Director of Selective Service in his "Second Report" to the President, says:

> "The ordinary concept of 'preaching and teaching' is that it must be oral and from the pulpit or platform. Such is not the test. Preaching and teaching have neither locational nor vocal limitations. The method of transmission of knowledge does not determine its value or effect its purpose or goal. One may preach or teach from the pulpit, from the curbstone, in the fields, or at the residential fronts. He may shout his message 'from the housetops' or write it 'upon tablets of stone.' He may give his 'sermon on the mount', heal the eyes of the blind, write upon the sands while a Magdalene kneels, wash disciples' feet or die upon the Cross. He may carry his message with the gentleness of a Father Damien to the bedside of a leper, or hurl inkwells at the devil with all the crusading vigor of a Luther. But if in saying the word or doing the thing which gives expression to the principle of religion, he

conveys to those who 'have ears to hear' and 'eyes to see', the concept of those principles, he both preaches and teaches. He may walk the streets in daily converse with those about him telling them of those ideals that are the foundation of his religious conviction, or he may transmit his message on the written or printed page, but he is none the less the minister of religion if such method adopted by him has the effective means of inculcating in the minds and hearts of men the principles of religion . . .

"The principle was extended to persons who were not, in any strict sense, ministers or priests in any ascerdotal sense. It included Christian Brothers, who are religious, who live in communities apart from the world and devote themselves exclusively to religious teaching; Lutheran lay teachers, who also dedicate themselves to teaching, including religion; *to the Jehovah's witnesses, who sell their religious books and thus extend the Word.* It includes lay brothers in Catholic religious orders, and many other groups who dedicate their lives to the spread of their religion." (Underline added)—Selective Service in Wartime, Second Report of Director of Selective Service 1941-42, pp. 237-241.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 22

You are instructed that National Headquarters of Selective Service, Washington, D. C., acting through its Director, General Lewis B. Hershey, rendered an opinion regarding the action to be taken by draft boards with respect to Jehovah's witnesses, which opinion (amended on November 2, 1942) reads as follows:

VOL. III OPINION NO. 14 (AMENDED)
NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

SUBJECT: Ministerial Status of Jehovah's Witnesses.

FACTS:

Jehovah's Witnesses claim exemption from training and service and classification in Class IV1D and duly ordained ministers of religion under section 5 (d),

Selective Training and Service Act of 1940, as amended, and section 622.44, Selective Service Regulations, Second Edition, which read as follows:

Section 5 (d):

"Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

Section 622.44:

"*Class IV-D: Minister of religion or divinity student.*

(a) In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

"(b) A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

"(c) A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily perform those duties."

Question.—May Jehovah's Witnesses be placed in Class IV-D as regular or duly ordained ministers of religion exempt from training and service?

Answers:

1. The Watchtower Bible and Tract Society, Inc., is incorporated under the laws of the State of New York for charitable, religious, and scientific purposes. The unincorporated body of persons known as Jehovah's Witnesses hold in common certain religious tenets and beliefs and recognizes as their terrestrial governing

organization the Watchtower Bible and Tract Society, Inc. By their adherence to the organization of this religious corporation, the unincorporated body of Jehovah's Witnesses are considered to constitute a recognized religious sect.

2. The unusual character of organization of Jehovah's Witnesses renders comparisons with recognized churches and religous organizations difficult. Certain members of Jehovah's Witnesses, by reason of the time which they devote, the dedication of their lives which they have made, the attitude of other Jehovah's Witnesses toward them, and the record kept of them and their work, are in a position where they may be recognized as having a standing in relation to the organization and the other members of Jehovah's Witnesses similar to that occupied by regular or duly ordained ministers of other religions.

3. Members of the Bethel Family are those members of Jehovah's Witnesses who devote their full time and effort to the manufacture and production of books, pamphlets, and supplies for the religious benefit of Jehovah's Witnesses, the purpose of which is to present the beliefs of Jehovah's Witnesses and to convert others. For their religious services, the members of this group receive their subsistence and lodging and in addition a very modest monthly allowance. This group of individuals consist of the office and factory workers at 117 Adams Street, Brooklyn, New York, and workers in the executive offices at 124 Columbia Heights, Brooklyn, New York, and at the Farms. Pioneers of Jehovah's Witnesses are those members of Jehovah's Witnesses who devote all or substantially all of their time to the work of teaching the tenets of their religion and in the converting of others to their belief. A certified official list of members of the Bethel Family and pioneers is being transmitted to the State Directors of Selective Service by National Headquarters of the Selective Service System simultaneously with the release of this amended Opinion. The members of the Bethel Family and pioneers whose names appear upon such certified official list come within the purview of section 5 (d) of the Selective Training and Service Act of 1940, as amended, and they may be classified in Class IV-D. The status of members of the Bethel Family and pioneers whose

names do not appear upon such certified official list shall be determined under the provisions of paragraph 5 of this Opinion.

4. The original paragraph 4 has been consolidated with paragraph 3 of this amended Opinion.

5. The members of Jehovah's Witnesses, known by the various names of members of the Bethel Family, pioneers, regional servants, zone servants, company servants, sound servants, advertising servants, and back-call servants, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's Witnesses. The deference paid to these individuals by other members of Jehovah's Witnesses also varies in a great degree. It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions which are normally performed by regular or duly ordained ministers of other religions, and, finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.

6. In the case of Jehovah's Witnesses, as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrants's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision.

(Signed) LEWIS B. HERSHEY,
Director.

LBH/spd
Legal
November 2, 1942
Secs. 5 (d), 622.44
DISTRIBUTION "A,B,C,D"

You shall consider and be guided by the foregoing opinion of the Selective Service System in addition to the other instructions given you herein, in determining whether or not the draft boards acted arbitrarily or capriciously in considering defendant's claim or in failing to consider the evidence filed by defendant before the board.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 23

Defendant's name did not appear on the certified official list mentioned in Opinion No. 14, issued by National Headquarters of Selective Service System, pertaining to Jehovah's Witnesses, and defendant gives a valid reason for the failure of his name to appear on such list.

The certified official list referred to in Opinion No. 14 does not control the classification of a registrant whose name does not appear thereon. The official list is not more than information from Selective Service National Headquarters that the individual whose name appears thereon comes within the purview of Section 5 (d) of the Selective Training and Service Act of 1940. It shows that National Headquarters is satisfied that the individual whose name appears on the official list has a standing on the same basis as the orthodox regular or duly ordained minister of other religions. The failure of defendant's name to appear on such list cannot be considered by you that he is not entitled to exemption and classification of IV-D under Section 5 (d) of the Act and Section 622.44 of the Regulations.

If you, in fact, find that defendant is regularly engaged in the performance of such ministerial duties and as such is recognized by the Watchtower Bible & Tract Society, Inc., it will not be necessary that you consider whether or not his name appears on such official list accompanying Opinion No. 14 of National Headquarters.

The inclusion of defendant's name on said list would not *ipso facto*, that is, within itself, entitle him to classification

as a minister of religion, nor could it be made a prerequisite to such classification. The presence of the name on such list is not made the conclusive and exclusive factor in determining whether or not one is a regular or duly ordained minister of religion under the Act.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 24

The Selective Service Regulations make the local board, the appeal board, and the President in proper turn, the sole classifying agencies, and the "certified official list" of Jehovah's Witnesses issued by Selective Service National Headquarters was never more than advisory, and never exclusive, and the law required that the local board, the appeal board and the President, as the case might be, to consider the evidence presented by a registrant claiming to be a minister of religion, irrespective of whether or not his name was on the "certified official list," and to determine whether or not he was a minister upon the evidence in his "cover sheet" at the time of making the classification, and neither could find that he was not such a minister, when he had claimed to be one, without evidence or reasonable evidence that he was not such minister, every person being presumed to speak the truth upon oath unless sufficient legal evidence exists to show that he has not done so.

You are instructed that Opinion No. 14 of the Director of Selective Service specifically required that Jehovah's Witnesses who devote their efforts in varying degrees shall be given consideration, and that the draft boards shall determine whether or not they are entitled to Class IV-D or minister of religion status, based upon "whether or not they devote their lives to the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions normally performed by regular or duly ordained ministers or other religions, and, finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded." In classifying a heterodox group the law also requires the draft boards to consider all the facts and not to follow necessarily the criteria used in determining if one is a minister of orthodox religions. (*In re Stewart*, 47 F. Supp. 416). If you are of the opinion that these requirements have not

been complied with by the draft authorities, then you should acquit the defendant and by your verdict say, "Not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 25

You are instructed that if there was substantial evidence before the draft board which made the final classification, that the defendant was one of Jehovah's Witnesses' ministers, and there was evidence in the defendant's file at the board that he was not such minister which was not substantial evidence, then the draft board acted arbitrarily and capriciously when it denied him exemption and classification of 4-D, and in this event you should acquit the defendant and by your verdict, "Not guilty."

By substantial evidence is meant a large quantum of evidence. It does not mean an absence of evidence and it means more than just a scintilla or some evidence. It means that there must be enough evidence before the boards so that a reasonable man in the same circumstances as presented in this case would come to the same conclusion as the boards did.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 26

You are instructed that draft boards have no right to concern themselves with the wisdom or expediency of exempting ministers of religion and ministerial students, as that has been determined by Congress. If a person is a minister of religion and has furnished proof thereof to the draft boards, he must be exempt, since the law so requires.

If you believe from the evidence adduced in his case that the evidence before the draft boards was such that it could not reasonably be concluded by the boards that the defendant was not such minister, you may acquit the defendant and by your verdict say "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 27

You are instructed that if, from all the evidence, you find that the draft board which finally classified the defendant arbitrarily and capriciously gave him a classification less favorable when he had established grounds for exemption and classification of IV-D, then you should acquit the defendant and by your verdict say "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 28

The proof shows that defendant is "conscientiously opposed to participation in war in any form and to be conscientiously opposed to both combatant and noncombatant military service" by reason of maintaining a strict neutral position of Scriptural neutrality concerning the wars between nations. This he indicated on the Selective Service Questionnaire (Form 40) series X. Thereafter he filed a Special Form for Conscientious Objectors (Form 47) further disclosing his proof of being conscientiously opposed to participation in war.

Under the Selective Training and Service Act all "conscientious objectors" are not deferred from training and service. The Act provides that if one is a "conscientious objector," upon induction he shall be assigned to do either noncombatant work in the armed forces or, if opposed to noncombatant work, to do work of national importance in a camp under civilian direction.

The fact that the defendant claimed to be conscientiously opposed to participation in war in any form in no way relieved the draft boards from considering whether or not he was entitled to complete exemption from all training and service as a minister of religion. In considering each classification, it is the duty of the draft boards to first determine whether or not the evidence shows that the defendant should be placed in some classification that would exempt him from induction.

If you find or believe from the evidence that the draft boards denied defendant his claim for exemption as a minister of religion because he also claims to be conscientiously opposed to participation in war in any form and in accordance with such claim "gave him what he asked for," that is to say, Class IV-E, or if you have a reasonable

doubt thereof, you will acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 29

You are instructed that the law requires draft boards to give a registrant the most favorable classification for which grounds are established, in the following order, to-wit: Class I-C (member of the land or naval forces of the United States, a cadet or midshipman or one separated from land or naval forces); Class IV-A (a man forty-five years of age or over); IV-C (registrants not acceptable for training and service because of nationality or ancestry, neutral aliens requesting relief from training and service, aliens not acceptable, and non-declarent aliens who depart with intention not to return); IV-D (minister of religion and divinity student); IV-B (officials deferred by law); III-C (man deferred both by reason of dependency and agricultural occupation or endeavor); III-A (man with child or children deferred by reason of maintaining bona fide family relationship); II-C (man deferred by reason of his agricultural occupation or endeavor); II-B (man necessary in war production); II-A (man necessary in support of war effort); IV-F (men morally, physically or mentally unfit); IV-E (men available for work of national importance; conscientious objector); IV-AO (man available for noncombatant military service; conscientious objector); and I-A (man available for military service).

If you believe from the evidence that the defendant was clearly entitled to a more favorable classification in the above order than he received, you may acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 30

You are instructed that draft boards are required to give registrants their proper classifications, which is the most favorable classification for which grounds are established, in the order mentioned in Defendant's Requested Instruction No. 25, irrespective of whether the registrants will accept such classification or not, and if you believe from

the evidence adduced in this case that the defendant was entitled to a IV-E classification, but was denied same because he had stated that he would not accept such IV-E classification because he considered IV-D his only lawful classification, you should acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 31

If you find or believe from the evidence that the local board denied defendant the right to make full proof before them orally or in writing or if you find or believe from the evidence that the local board did not give defendant a full and fair hearing in consideration of his case, or, that the local board acted unfairly, capriciously, or prejudicially, or refused or failed to consider evidence filed by defendant relative to his claim as a minister of religion you will acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 32

You are instructed that it was the responsibility of the draft boards to decide in the first instance in which class the defendant should be placed and this should be accomplished so as to give equal and fair justice to all and such classification should be impartial and free from any political influence and in making such classification there should be no discrimination for or against defendant because of his race, creed or color, or because of his membership in any religious organization, and if you find from the evidence or have a reasonable doubt thereof that the draft boards discriminated, failed to give fair justice and were not impartial in making such classifications, you wll acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 33

You are instructed that the law requires the local board to allow a personal appearance to the registrant if he re-

quests the same within ten days following his classification and at such appearance to permit the registrant to offer any new evidence, oral or written, which he thinks should entitle him to a classification he seeks, and after such personal appearance to be again classified, and if dissatisfied with such new classification, that the registrant may take an appeal to the appeal board, and if dissatisfied with the classification given by the appeal board, if the vote is not unanimous, the registrant may take an appeal to the President.

If you believe from the evidence that the defendant was denied any of said rights you should acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 34

You are instructed that the Selective Service Regulations provide for a registrant to have the benefit of a fair and impartial hearing before the local board. If from prejudice or for other reason the local board is disqualified, it is required to transfer the registrant to another local board for classification, and failing to do so is not cured by an appeal because the registrant is entitled to a full and fair hearing before an impartial local board before an appeal. The registrant is entitled to a fair decision by both the local and appeal boards.

If you believe from all the evidence in this case that any member of either the local or appeal board which undertook to classify the defendant, was so prejudiced that he could not fairly try the defendant, yet participated in classifying him, or that two or more acting members were disqualified from undertaking to classify him by reason of their prejudice, you should acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 35

You are instructed that the local board is not authorized to report a registrant to the United States District Attorney for prosecution unless and until he is found to be a delinquent. Sec. 601.5 (as amended November, 1943) defines

a delinquent as follows:

"A 'delinquent' is a man liable for training and service under the provisions of the Selective Training and Service Act of 1940, as amended, who fails or neglects to perform any duty required of him under the provisions of the Selective Training and Service Act of 1940 as amended, and regulations made pursuant thereto."

If you find and believe from the evidence, or have a reasonable doubt thereof, that at the time that the local board issued the notice of delinquency the defendant was under no duty for training and service because a minister of religion, then he would not be a delinquent, and if you so find, or have a reasonable doubt thereof, you will acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 36

You are instructed that if the order to report for induction which the indictment alleges the defendant failed to obey was invalid and void that the defendant was under no obligation to obey it and could disregard it with impunity.

You are also instructed that said order to report would have been invalid if the draft board denied the defendant a full and fair hearing, or any member thereof was prejudiced against him so that he could not act fairly and impartially, yet participated in the decision, or they acted arbitrarily and capriciously in denying him the most favorable classification for which grounds were established.

You are further instructed that the meaning of "arbitrary" and "capricious" is "without any reasonable cause; without cause based upon law; without reason given; in disregard of evidence. It is comparable to, without justification or excuse; with no substantial evidence to support it; a conclusion contrary to substantial, competent evidence." (In re Rogers, 47 F. Supp. 265)

If you find and believe from the evidence that the said order to report for induction was void, you will acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 37

You are instructed that while the draft boards may pass upon factual questions, they may not arbitrarily or capriciously substitute any other standard than the law and regulations, or disregard the explicit intent of the regulations, and that neither zeal or personal disagreement with the effect produced by impartial enforcement of the regulations should be allowed to influence the conclusions arrived at in classifying any person under the provisions of the Selective Training and Service Act and the Regulations issued thereunder. The local boards must hold a fair and impartial hearing with regard to each registrant and the decision of the draft boards must be based solely upon the evidence before them, and the basis of the local board's decisions must be placed in the file at the time of the classification in order that the registrant may refute the same at his personal appearance and before taking an appeal. The draft boards cannot base their decisions upon speculation rather than evidence.

If you believe that any of these procedural requirements were not complied with, you may acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 38

You are instructed that, according to the Selective Service Regulations, Section 622.44 (c).

> "A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties."

If you believe and find from the evidence, or have a reasonable doubt thereof, that th defendant submitted to the local board before classification proof that he is and was an "ordained minister" of Jehovah's witnesses and that there was no evidence or proof before the boards disputing such claim, or if they had disputing proof and arbitrarily and capriciously failed to consider the proof submitted by defendant that he was an "ordained minister"

of Jehovah's witnesses, then you will acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 39

You are instructed that, according to the Selective Service Regulations, Section 622.44 (b),

> "A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister."

If you find from the evidence or have a reasonable doubt thereof that the defendant submitted to the local board before classification proof that he is and was a "regular minister" of Jehovah's witnesses and that the draft boards had no evidence or proof disputing such claim or if they had disputing proof and arbitrarily and capriciously failed to consider the proof given them by defendant that he was a "regular minister" of Jehovah's witnesses, then you will acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 40

You are instructed that draft boards and draft authorities are not above the law, but are required to be obedient to law in the performance of their duties, and are governed by the Selective Service Regulations and by the "interpretive regulations" commonly called "Opinions" of the Selective Service Director.

You are further instructed that the exemption allowed to ministers of religion by the Selective Training and Service Act is allowed to ALL Ministers of religion and is made known by Congress and is binding upon all draft boards and authorities.

You are also instructed that the various sects and organizations have the right to set up and determine what the qualification of their ministers shall be, and that where a

person has duly qualified as such minister and regularly serves as such, and has furnished due proof thereof to the draft authorities; without specific substantial evidence that he is not such minister, they must find that he is such minister.

Accordingly you are instructed that if you find or believe from the evidence adduced in this case that the defendant was a minister of religion and regularly served as such, and furnished his draft board due proof thereof, and that there was no substantial evidence in his file at the time of his final classification that he was not such minister, or that the draft boards violated procedural requirements, or acted contrary to substantive law, or that the draft boards were prejudiced, or acted arbitrarily or capriciously in denying the defendant a more favorable classification than he received, then you should acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 41

Defendant is charged with having "knowingly, wilfully and unlawfully" failed to report for induction. The word "Knowingly," as used in criminal statutes, means that at the time of the committing of the offense the defendant must have known what he was doing, and with such knowledge proceeded to commit the offense charged. As used in the Selective Training and Service Act of 1940 it is distinguished from innocently, ignorantly or unintentionally. The word "wilfully" does not merely mean voluntarily or unintentionally. It means prompted by bad faith or with an evil intent or for a bad purpose. The word "unlawfully" means that which is done in an unlawful manner in violation of laws, rights and duties. It almost means without legal justification. If the defendant had legal justification for his acts they could not be unlawfully done. In other words, the term "unlawfully" implies that the act is not done as the law recognizes.

The burden is upon the prosecution to prove that the defendant failed to report in each of the three ways charged.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 42

You are instructed that even though you may not reach the conclusion that the defendant was entitled to exemption from training and service as a regular or duly ordained minister of religion or that the draft boards did not arbitrarily and capriciously classify him, you must and will consider all of the evidence which the defendant submitted to the draft boards in proof of his claim for exemption as a minister of religion in determining whether or not he knowingly, wilfully and unlawfully failed to report for induction. Although not entitled to exemption as a minister of religion, if you find or believe from the evidence or have a reasonable doubt thereof that the defendant honestly and in good faith believed at the time he received the order to report that he was not liable for training and service but was exempt from all training and service as a minister of religion, on the basis of the evidence which he had submitted to the draft boards, and thereby honestly believed that the Act was not applicable to him and that he was exempt from all training and service thereunder, you will acquit the defendant and by your verdict say, "not guilty."

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 43

You are instructed that the burden is not upon the defendant to prove his innocence, but upon the government to prove his guilt, which it must establish beyond a reasonable doubt, legally convict, and until you are convinced beyond a reasonable doubt that the defendant is guilty of the charge laid in the indictment, it is the duty of each of you to vote for acquittal.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 44

You are instructed that the defendant is presumed innocent until his guilt is established beyond a reasonable doubt, and if any member of the jury is not convinced beyond a reasonable doubt of the guilt of the defendant, it is the duty of such member of the jury to vote for acquittal notwithstanding that all other members of the jury are con-

vinced beyond a reasonable doubt of the guilt of the defendant.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 45

In order to overcome the legal presumption of innocence, the evidence must be sufficiently strong to convince the jury beyond a reasonable doubt that the defendant is guilty. Before you deliberate you will desire to know what is meant by the term "reasonable doubt." It means a doubt founded on reason and which must arise from the evidence. If, after a fair and impartial consideration of all the evidence and circumstances in the case, you have found the facts which establish the guilt of the defendant to a moral certainty which establish the guilt of the defendant to a moral certainty which abides with you and gives you conviction which if called upon to put into words you can explain, then, of course, you have no reasonable doubt as to guilt. On the other hand, if you have no such abiding conviction after considering the evidence, the government has failed to prove the defendant's guilt beyond a reasonable doubt.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 46

You are instructed that if you find the evidence as a whole is as consistent with the innocence as with the guilt of the defendant, your verdict should be, "not guilty."

(S) VICTOR F. SCHMIDT.
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 47

You are instructed that the protection of the individual is of paramount importance in a democracy, and that the only patriotic verdict which can be rendered is one which decides the case without prejudice, fear or favor, according to the law and the evidence, and without any other objective or purpose.

You are also instructed that you shall not take into con-

sideration the fact that the draft board members may or may not be compensated for their services.

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

REQUESTED SPECIAL INSTRUCTION NO. 48

In the consideration of the evidence in this case, members of the jury, you will not be prejudiced by the youthfulness of the defendant as a minister of Jehovah's witnesses when we recall from the Bible that Jesus at the age of twelve years was found about his Father's business as teaching and preaching in the temple at Jerusalem (Luke 2:42-49), that the apostle Paul exhorted no man to despise the youth of Timothy who was engaged in the work of the ministry with that apostle (1 Timothy 4:12-16), that Jeremiah was a child when the Lord directed him to begin his active work as a minister of Jehovah (Jeremiah 1:5-9), the Lord Jehovah encourages one to begin early in life to engage in the ministry (Psalm 71:17-18 and Deuteronomy 30:2), the scriptures are positive that the prophet "Samuel ministered before the Lord, being a child, girded with a linen ephod," and Jehovah foretold through his prophets that many of his ministers at the present time would be young men (Psalm 8:2; Matthew 21:16 and Joel 2:28).

(S) VICTOR F. SCHMIDT
Attorney for Defendant.

Thereupon, the opening argument on behalf of the Government was made by Mr. Feighan, Esq., as follows:

MR. FEIGHAN: If the Court please, and ladies and gentlemen of the jury:

The issue in this case is the charge in the indictment of failure to report for work of national importance. If you will recall, way back when we started this trial, the Government said that it would prove, as charged in the indictment, that the Defendant, within the age group, was required to register for Selective Service; that this registrant, George William Dodez, registered; that he was classified; and that after classification in Class 4-E, as a conscientious objector, he was assigned by the Director of Selective Service to do work of national importance; that he was ordered to report for work of national importance,

and that he did not carry out the duties imposed upon him.

The Clerk of the Draft Board testified to each and every one of those things that I have just mentioned.

That is the Government's case. That is all there is to it. That this man, knowingly, wilfully, unlawfully and feloniously failed to carry out that duty.

When the Defendant took the stand, he talked about many things other than the order to report for work of national importance. And, finally, on cross examination, when he was asked his age, whether he registered, whether he was classified, whether he was sent the order—all of which he answered to, that he had registered, that he was classified, that he received the order. And, when asked if he reported, he said no, that he did not report. When asked why, he gave no reason for not reporting on that day. He was not incapacitated. As a matter of fact, he appeared at the board two days before and told the board that he would not report.

Ladies and gentlemen of the jury, this is a serious matter. This man is charged with the crime, under a statute passed by Congress, which is the law of this land, and he openly tells us that he will not carry out that order as given to him by the draft board, a duly constituted authority in such manner. He very boldly says he will not carry out the order under the law of the land.

Now, I could go into many of the matters to which he testified, but, if you will recall, he said that he was a minister. Of course, that is not a valid defense to this matter, that is, to this indictment. You will also recall he said he was not only a minister, but that every member of his congregation was a minister.

Ladies and gentlemen, under our theories, that is, the majority of the people in this country, I don't think we can quite agree that everybody in the congregation is a minister, and I don't think we can agree with this Defendant even that this is important. The important thing is that he only wishes to accept the privileges by coming into this court room and demanding every one of his rights under the Constitution, but he refuses to carry out his duties under that Constitution.

Ladies and gentlemen, you have heard the evidence. I don't believe there is another word that I can say, except

that it is your duty to find this man guilty as charged in the indictment.

I thank you.

Thereupon, the case was argued to the jury on behalf of the Defendant by Mr. Schmidt, Esq., as follows:

MR. SCHMIDT: If Your Honor please, for the sake of the record, may the record show that there were presented to the clerk, and thence to the Honorable Court, the Defendant's special instructions, instructions 1 to 48, and there were appended also to these special instructions, detailed instructions under Sub-Division (4) for the consideration of the Court, which have been on file since the outset of the case, and before argument of the counsel. If Your Honor please, counsel also suggests that these be considered in the instructions that will be given.

Now, members of the jury:

Going right back to the indictment, again, as I stated at the outset of this case, before the Government can maintain its action against this defendant, it must prove the various allegations beyond a doubt, that the individual, called into question, did knowingly, wilfully, unlawfully and feloniously fail to perform such duty of reporting for work of national importance.

Concerning the fact of whether the individual unlawfully failed to report for work of national importance, members of the jury, we hold that the evidence in this case shows that the Defendant relied upon the law. The evidence is not only substantial in this case, but all the evidence shows that this individual was a regular and duly ordained minister of religion at all times that he was under the jurisdiction of the Selective Training and Service Act, and, therefore, exempt.

He relied upon the law relative to this. He believed that the Act of Congress, according to the evidence, was to be taken as it is; that regular and duly ordained ministers of religion and students attending theological institutions that had been in existence for at least one year prior to the enactment of this act, are exempt from training and service under the Act, but not from registration.

The undisputed evidence in the case is that he did register. And the undisputed evidence is that he completed all of the various steps, that is, such as are relevant to the classification and taking of appeal. He made a demand in writing for a personal hearing before the board. He took his appeal in due course. He took a Presidential Appeal to the National Headquarters, and he took a final type physical examination, which, at that time, was the last and only examination that was available under the law, at that time, to prove his acceptability, and he was accepted for general service.

We hold; members of the jury, that the undisputed evidence shows that he is a minister. Now, members of the jury, while there may be various religious organizations here in America, it is not a duty that can devolve upon the draft boards, we hold, according to the evidence, to decide whether an individual is in a certain status [redacted] board can decide and make its finding [redacted] an individual is not a district judge of the land, who is exempt, that is determined by other facts. There is no draft board in the land that is entitled, or has the authority to determine whether an individual is a Catholic priest or not. That devolves upon the hierarchical arrangements, whereby the Catholic priest is authorized and ordained and commissioned to perform that duty; no matter what an arbitrary draft board might do or say that questions his ordination and functions as a priest. There is no draft board in the land that has the authority to make or unmake a governor of this State of Ohio, and, yet, such individual is exempt during the incumbency of his office from service under the Selective Training and Service Act of 1940.

Now, members of the jury, when the undisputed facts are that this individual is a regular and duly ordained minister of religion, and as recognized by the society and organization which has appointed him, members of the jury, we must give him the same credence and the same good faith and protection under our Constitution and laws as we would give to any other minister or priest or any constituted public official, as appointed by any of the other organizations, or the constituted bodies that are empowered for such appointment.

Members of the jury, we are not complaining about the classification and the exemption of the various Catholic priests, and the Presbyterian ministers, and all of the other

ministers. Under the law, the Defendant recognizes that exemption by the Act of Congress. But, when we exempt one class of individuals, and there is no evidence in the file here that shows that he did anything else in his life as an occupation or profession, then, let us be fair. Let us accord to the individuals under the flag a fair deal. We are fighting for religious freedom and equality relative to religious rights. Let us accord to this individual the same rights as are accorded to other individuals in the respective organizations.

Now, it is said by the District Attorney that when he was ordered to report, and on the witness stand, when he was asked why he did not report, that he gave no reason. I beg to differ, with due respect to the District Attorney. He stated on the witness stand, and there is abundance of proof in the file, he stated that the reason that he couldn't report is because reporting for work of national importance would interfere with his work as a minister. You heard him say that from the stand. There is abundant evidence in the file. The ministerial profession has been recognized by Congress as a ground for exemption. He relied upon the exemptive powers granted by Congress, and he therefore had a reasonable right upon which to predicate this failure to report.

THE CLERK: Your time is up, Mr. Schmidt.

MR. SCHMIDT: We ask, respectively, that you return a verdict for the Defendant.

MR. FEIGHAN: The Government waives final argument.

CHARGE TO THE JURY

FREED, J.: Members of the Jury.

When you were summoned as prospective jurors in this case, you were advised that the Defendant was indicted by the Grand Jury of this District for violation of certain laws of the United States. The specific provisions of the law charged against him are the Selective Training and Service Laws of 1940. That law provides that it shall be the duty of every male person residing in the United States, who is between the ages of 18 and 65, to register at such time or times, and in such manner, and in such age group or groups,

as shall be determined by rules and regulations prescribed under the law.

The law further provides that every male person who resides in the United States, who is between the ages of 18 and 45, shall be liable for training and service in the land or naval forces of the United States, and that they shall be selected for that training and service in a fair and impartial manner, under such rules and regulations as the President of the United States may prescribe.

The law further provides that nothing shall be contained in that Act which will be construed to require any person subject to combatant training and service, if, by reason of religious training and belief, he shall conscientiously object to participation in war in any form. A person claiming such exemption from combatant training because of such conscientious objection, if he is inducted into the Armed Forces, shall be assigned to non-combatant services, and if, because of religious training and belief, he cannot, in his own belief, serve in the Armed Forces of the United States even in non-combatant duty, in lieu of such induction, he may be assigned to work of national importance under civilian direction.

The law further provides that the President of the United States shall be authorized to prescribe the necessary rules and regulations to carry out the provisions of the Act. And it likewise provides that the local boards, under the rules and regulations prescribed by the President, shall have the power within their respective jurisdictions to determine all questions with reference to exemptions or deferment from military training and service; and that the decisions of the local boards shall be final, except where an appeal is authorized in accordance with the rules and regulations prescribed by the President of the United States.

The law further provides that anyone who in any manner shall knowingly fail or neglect to perform any duty required of him under, or in the execution of this Act, or rules and regulations, shall be guilty of an offense, and shall be punished accordingly.

Now, in this specific case, this Defendant is charged by the Grand Jury that he was a male citizen of the United States, between the ages of 18 and 45, and was charged with the duty of carrying out the provisions of the Selective Training and Service Act. That he registered on June 30,

1942, at Orrville, in Wayne County, and came within the jurisdiction of this Court, and under the jurisdiction of Selective Service Board No. 2 of that county. That he made a claim for exemption from combatant training or service in the land or naval forces of the United States, by reason of religious training and belief, and that claim was sustained by the Board, and that he was subsequently classified in Class 4-E, as a conscientious objector. And that on the 8th day of April, 1944, he was ordered to report for work of national importance, on April 21st of 1944. And that he, on that date, knowingly, wilfully, unlawfully and feloniously failed to perform a duty required of him, in that he failed to report for work of national importance.

The fact that an indictment has been returned against this Defendant, may in no wise be considered by you as evidence against him, nor are you warranted in drawing any unfavorable inference against him because the Grand Jury has returned the indictment.

The indictment will be with you in your jury room, for the purpose of assisting you to understand the nature of the charge against this Defendant.

To the indictment, this Defendant entered a plea of not guilty. By that plea is denied each and every material charge, averment or substantial allegation contained in the indictment against him. And, because of that plea of not guilty, he is presumed to be innocent of all of the offenses charged in the indictment. This presumption attends and protects him throughout the entire course of the trial, until such time as that presumption is overcome by evidence which is presented by the Government, which convinces you of his guilt beyond the existence of a reasonable doubt. By a reasonable doubt, I do not mean a mere capricious, imaginary, fictitious or flimsy notion that the Defendant may be innocent, but I mean exactly what the word implies, a doubt founded in reason, and a doubt for which you could give a reason. It means a substantial doubt arising on the evidence or lack of evidence, and such a doubt as would cause you, as reasonable men and women, to halt and hesitate before you acted in the more serious matters of your own immediate concern.

Before you can return a verdict of guilty against this Defendant under this indictment, you must find from the evidence, beyond a reasonable doubt, that the Defendant

committed the crime charged in the indictment, and if the Government fails to prove every essential element of the offense contained in this indictment, it will be your duty to find the Defendant not guilty.

You will, therefore, under the form of this indictment, ask yourselves the question: Has the Government established to your satisfaction, by proof of a degree which I have indicated, that this Defendant was a male person, residing within the United States, of the age which required him to register? You will ask yourselves the question. Has the Government established to your satisfaction that he registered on June 30th of 1942; that he was duly classified by the Selective Service Board which had jurisdiction of his case; and that having registered, and having been so classified, that he was given a notice to appear for induction, or, rather, for work of national importance on April 21st of 1944; and that on that date, or at or about that date, within the jurisdiction of this Court, he knowingly, willfully, unlawfully and feloniously failed to perform a duty which was required of him, in that he failed to report for work of national importance.

Now, the word "Knowingly" means that at the time of the committing of the offense, the Defendant must have known what he was doing, and, with such knowledge, proceeded to commit the offense charge.

The word "willfully" does not mean voluntarily or unintentional, it means that he was prompted by bad faith or with an evil intent or for a bad purpose.

The word "unlawfully" means that which is done in an unlawful manner, in violation of laws, rights and duties.

It is usually the custom of this Court to review the evidence presented in the cases, but, in view of the brevity of the testimony that was presented in this case, the Court does not deem it necessary to review it for you. Although the trial of this case has taken over a day, a great deal of it was consumed in legal discussions. The evidence presented in this case has been fairly brief, and I have no doubt that each and all of you recall distinctly and definitel what the testimony was that was presented.

Now, if, after weighing all the evidence, you come to the conclusion that the Government has established the guilt of the Defendant, by evidence which convinces you beyond the existence of a reasonable doubt, it is your duty

to return a verdict of guilty. If, on the other hand, careful, conscientious deliberation and weighing of all the evidence leaves a reasonable doubt in your minds as to the guilt of the Defendant, it is your duty to return a verdict of not guilty.

In arriving at your verdict, you are to follow the law as the Court gives it to you, but you, ladies and gentlemen, are the sole judges of the facts, and in this regard the Court has no supervision or control over you. It is your duty to find the facts and search for the truth. You are the sole judges of the credibility of the witnesses, and the weight that should be given to their testimony. And, in order to determine that, you should take into consideration the demeanor of the witness on the witness stand, the interest that the witness may have in the outcome of the case pending before you. You shall take all of those things into consideration in determining the weight and credibility that is to be given to the testimony of witnesses. Opening and closing arguments have been made by counsel for the Government and the Defendant. These statements and aguments are not to be regarded by you as evidence. The evidence consists only of those facts which the Court has permitted you to hear from the witness stand, and such exhibits as the Court has allowed in this case. It is from those facts and the reasonable interference and conclusions which follow from those facts and the exhibits, that you will come to a determination of the guilt or innocence of the Defendant.

When you retire to your jury room, you will select one of your number as foreman, and proceed with your deliberations. You will have with you the indictment and the various exhibits admitted by the Court. When all of your number have agreed upon a verdict, the foreman, and he alone, will sign it and return it in open court on the form which will be provided for that purpose by the clerk.

Anything further on behalf of the Government?

MR. FEIGHAN: Your Honor, I would like you to charge the jury that defense as a minister does not constitute a proper defense.

THE COURT: Well, I have charged that in other cases, and I thought that the various elements which I recited must be proved, includes only the things which must be established. The jury understands fully and completely what

the necessary elements of the offense are, and that has been definitely and distinctly summed up. I don't see any necessity of going back again, Mr. Feighan.

MR. SCHMIDT: May it please the Court, may the record show—

THE COURT: I don't want to indicate by that, that that is not the law, but—

MR. FEIGHAN: Yes, I understand.

MR. SCHMIDT: May it please the Court, may the record also show that the special requests for the charges, presented by the Defendant, at this time are renewed, and such requests are refused, to which the Defendant respectfuly excepts?

THE COURT: Yes. They are refused except in so far as they are contained generally in the general charge of the Court.

MR SCHMIDT: Yes.

THE COURT: There are numerous paragraphs which are tantamount or almost verbatim of the charge which I have used repeatedly in these cases. But, in all other respects, except in so far as the general charge includes them, the requests will be denied, and the record may so show.

MR. SCHMIDT: Yes. Now, if Your Honor please, it becomes necessary, if the counsel for the Defendant wishes to take exceptions to the charge, that he cannot do so in a general manner, but must state specifically the words, in substance, to which the objections are made, and I would like to do that now.

THE COURT: All right.

MR. SCHMIDT: May I do it out of the presence of the jury?

THE COURT: You may do it here.

(Whereupon, the following proceedings were had out of the hearing of the jury, but in their presence.)

MR. SCHMIDT: The Defendant respectfully excepts to those words of the general charge, in the first place, which, in substance, stated the local boards have power to determine the exemptions and deferments under the Act, without giving consideration in a charge to the exceptions when the administrative processes are completed, otherwise it would be a violation of the Bill of Attainder Prohibition in Clause 3 in Section 9 of Article I of the United Ctates Constitution.

(Thereupon, the following proceedings were had in the presence and hearing of the jury:)

THE COURT: May I ask this, Mr. Schmidt, are those matters that you wish to go into the record before the jury retires?

MR. SCHMIDT: These can be made out of the presence of the jury, if Your Honor please.

THE COURT: Well, now, I want it understood, if you wish them made before they retire, I want you to make them.

MR. SCHMIDT: I believe I had better make them, to save any doubt in the matter, I will make them now.

THE COURT: Before the jury retires?

MR. SCHMIDT: That is right.

THE COURT: All right.

(Thereupon, the following proceedings were had out of the hearing, but in the presence of the jury:)

MR. SCHMIDT: It is specifically objected, on the part of the Defendant, that the exemptions are matters for Congress to determine in this matter, and not for the local board, especially when the status of the minister is involved and when there is no contradition that the individual is not a minister.

The Defendant excepts to the general charge, specifically, in the second instance, to those words which, in general, were: The decision of the local board is final. This is objected to, without there being an additional qualification, as in the instant case, where the individual had exhausted all of his administrative remedies, and, therefore, the Defendant believes that the action of the local board is not final, but susceptible of review, even in a criminal case; otherwise, to make final the holding of the local board, would be making of the local board the final arbitrator and making of this Government a government by men and not by law, which is contrary to Clause 3, in Section 9 of Article I of the United States Constitution, and contrary to the due processes and other rights prescribed under the V and VI Amendments to the Constitution.

The Defendant excepts in the third instance to the general charge of the Court by the specific words, in substance, that on April 21, 1944, he did knowingly, willfully, unlawfully and feloniously fail to perform such duty, as a statement of fact, without qualification, near the outset of the

charge. This, in substance, would lead to a conclusion of fact which only the jury may decide upon, and would be in violation to the due process and other rights enumerated under the V and VI Amendments to the Constitution.

The Defendant excepts specifically to that portion of the charge, which, in substance, defined a reasonable doubt as being a substantial doubt, without qualifying what the word "Substantial" means, and could mean a preponderance, or any other weighty doubt, supported by all or substantial evidence.

The Defendant specifically objects to that portion of the charge, in the fifth instance, to those words which were, in substance, that it is necessary for the Government to show, before conviction, that this individual is a male person of the age requiring him to register; that he was duly classified; that he was given a notice to report for work of national importance, and that he did knowingly, willfully, unlawfully and feloniously fail to perform such duty. It is pointed out, in this instance, that the Court omitted to state that it was necessary also for the Government to show that there was a hearing, that is, a personal hearing, before the local board, and that such hearing was a fair hearing. Also, the Court failed, in this delineation of requirements, to show that there was an appeal duly taken. And the Court failed to state that the Government had to show a duty to be performed under the Act, before it was necessary for the Defendant to report, which instruction was contrary to the due process and other rights guaranteed, and acquired in a criminal action, under the V and VI Amendments to the Constitution.

That is all.

(Whereupon, the following proceedings were had in the hearing and presence of the jury:)

THE COURT: All right, ladies and gentlemen, you may take the case now.

Is there any objection to permitting this jury to separate?

MR. SCHMIDT: No objection.

THE COURT: I want to be sure that the record shows that both sides agree that this jury may separate.

MR. FEIGHAN: No objection, Your Honor.

THE COURT: I am going to permit you to go to lunch before you start your deliberations, ladies and gentlemen.

During the time that you are separated, you will observe the admonition that the Court has given you. Do not talk to anyone about this case, or permit anyone to talk to you about it. Do not discuss it among yourselves, or in separate groups. Discuss it at the time you reach your jury chambers and proceed with your deliberations. If anyone does attempt to talk to you about it, it is your duty to report it to the Court immediately.

You will return to your jury room to deliberate at two o'clock, city time, at the time to which this Court will adjourn likewise. The bailiff will now adjourn court until two o'clock.

(Whereupon, at 12:30, a recess was taken in the above-entitled matter until 2 o'clock, P. M., at which hour of 2 o'clock, P. M., the jury retired to their jury room.)

(Whereupon, at 3 o'clock, P. M., of the same day, the jury returned to the court room, and the following further proceedings were had:)

THE CLERK: If Your Honor please, the jury is ready to report.

(To the Jury) Answer to your names, please.

Victoria Lesowski, Mrs. N. Ferron, Mrs. Hattie Myers, C. S. Keiser, Mrs. Delia Gallagher, Eileen C. Dewine, Isabella McGee, Clarence P. Reeves, William Fred Heinemann, Ethel Fitch, George A. Ismert, Jr., Mrs. Emma Brown.

(The jurors answered to their names.)

THE CLERK: Have you agreed upon a verdict, members of the jury? (Takes verdict from jury.)

(Reading) "In the District Court of the United States, Northern District of Ohio, Eastern Division, United States Plaintiff, versus George Willam Dodez, Defendant:

"We the jury to this case, being duly impaneled and sworn, do find the Defendant guilty.

"Signed: William Fred Heinemann, Foreman."

Members of the jury, is this your verdict?

THE JURY: (In Unison) Yes.

THE CLERK: So say you all.

MR. SCHMIDT: May the record show that the Defendant excepts to the verdict as being contrary to the evidence.

THE COURT: Thank you, ladies and gentlemen of the jury, for your consideration of thi case. Will you just have seats in the back of the court room, so that you can be

ready to proceed with the other cases.

Come forward, Dodez.

(Whereupon, the Defendant came forward.)

MR. SCHMIDT: If Your Honor please, in behalf of my client, I ask a continuance of the time of sentence and judgment, due to the fact that this individual has matters not only affecting him, but the congregation down at Wooster, Ohio; also, Your Honor, it is desirous that a motion be prepared for judgment notwithstanding the verdict. And furthermore, if Your Honor please, based upon the evidence in this case, we would like to prepare a brief showing that there is a substantial Federal question involved in this case, which is different, decidedly, than the Falbo case, because in that case, which is the only criminal action that has gone to the United States Supreme Court, and which the ministerial status was under consideration—

THE COURT: Hasn't our circuit held, in so many words, that the defense that he is a minister, does not constitute a defense? It seems to me that Judge Simons wrote an opinion, in which he specifically referred to that, in a case in which Judge Carland refused to permit that defense, and also specifically held that—

MR. SCHMIDT: Your Honor, I can well understand that that would not be a defense under circumstances where the Defendant has not exhausted his administrative remedies.

THE COURT: Well, I didn't understand that that was based on the proposition that he has not exhausted his administrative remedies. There were two defenses in that case, as I recall. One was that he was a minister of religion, and the other one was that the Board acted capriciously and arbitrarily. And the Circuit Court held, our Circuit held that the defense that he was a minister did not constitute a defense, the testimony or the claim did not constitute a defense.

MR. SCHMIDT: Now, even be that as it may, the Supreme Court of the United States in the Falbo case, on the 4th day of January, indicated that Mr. Falbo had not exhausted his administrative remedies, in that he did not, or he failed to take the final physical examination at the induction center. The individual, Defendant, here, we hold, has done that, and now it becomes a federal question again.

THE COURT: Of course, it is a Federal question. It was a Federal question here, you are under the Federal

court. I haven't a doubt about that, Mr. Schmidt. I don't understand in what respect this case differs from all the other cases that we have had. It is the identical case, aside from the voluminous requests that you made, and the motions that were filed. The testimony hasn't differed from the testimony in all the other cases. That is, aside from your objections and your pleadings, there was nothing in the testimony that the Court could see that made it differ from the other cases.

Now, if the District Attorney feels that there is a substantial question to be presented to the Circuit Court, why, I am perfectly willing, if that is the wish of both sides, the Court doesn't want to raise any objection to it.

MR. FEIGHAN: That is not the feeling of the Government, Your Honor.

THE COURT: So you object to a delay in the imposition of sentence here?

MR. FEIGHAN: I don't see any reason for it, Your Honor.

MR. SCHMIDT: The reasons that we have is to give us time to prepare one or more motions, that is, before sentence, and, also—

THE COURT: Well, do you have anything aside from all the voluminous things that you have presented? You presented so much here that I just wonder if there is any more that you have. Are there any new matters? You have had this matter now, Mr. Schmidt—and I don't want counsel to feel that I don't want to be helpful here, I don't want to be arbitrary, far from it—but this matter has been pending for a long time. This indictment was returned—

MR. FEIGHAN: June 12, 1944.

THE COURT: It was returned six months ago. You have had the matter under consideration for a long time. You certainly aren't taken by surprise here, where you couldn't have your pleadings, your notice of appeal, all of your matters ready so that it could be presented. Now, again, I repeat I don't wish to be arbitrary, but you have had all the time anybody could possibly have in any case. You have been working on these cases, Mr. Schmidt, and as I understand it, you have appeared before me in these cases repeatedly, you have appeared before other courts, you know what the questions are. Now, it isn't as if you had a matter which is new, where you needed additional time for preparation.

Do you have the pleadings ready, do you have your notice of appeal ready?

MR. SCHMIDT: If Your Honor please, I haven't it completed yet, the notice of appeal.

THE COURT: Well, why not? You have been waiting here all this time. You have had the weekend.

MR. SCHMIDT: I have prepared as much on the notice of appeal as I can at this time, and I have prepared as many grounds that I could, but the grounds I refer to, because they have changed, from the charge to the jury—that is, the grounds that I had contemplated would be grounds for appeal, and I also—

THE COURT: The request that you made that this man need more time, he was tried once, as I understand it.

MR. SCHMIDT: That is right.

THE COURT: He knew of this thing for months, now.

MR. SCHMIDT: Well, I will leave it at the discretion of the Court.

THE COURT: Is it your wish, or do you think that this Court ought to permit him to carry this thing on until the war is over?

MR. SCHMIDT: No, if Your Honor please, I would like a continuance for one week, for the sentence.

Now, here are the things that I propose to attend to: To complete this notice of appeal, and to complete the petition in a pauper's form, because this individual has no property except an automobile. And I must obtain an affidavit from him relative to that and draw up a motion. And I would also like to file a motion for judgment notwithstanding the verdict. And, furthermore, the position of this individual is different than those other Defendants that have been tried, because the other Defendants did not have a congregation over which they presided, and he has numerous studies and work with respect to his congregation.

THE COURT: What is the bail in this case?

MR. FEIGHAN: Your Honor, the bail is $1,500.

THE COURT: The bail will be fixed at $5,000, and you will be ready to file all your pleadings and everything, and the imposition of sentence will be on Friday morning at ten o'clock. Unless you can furnish the bail, he will be committed.

MR. SCHMIDT: Thank you, Your Honor.

Whereupon, a continuance was taken in the above—

entitled case until Friday, December 15, 1944, at 10 o'clock A. M.)

Friday, December 15, 1944, 10 o'clock, A. M.

(Hearing resumed, pursuant to adjournment.)

APPEARANCES:

(Same as before.)

THE COURT: You may proceed.

MR. SCHMIDT: May it please the Court. May the record show, at this time, that the Defendant moves for judgment notwithstanding the verdict, on the ground that the construction given the Act, and regulations, whereby the individual is prevented from raising all of his defenses in a criminal action, makes of the said Act and regulations herein, a Bill of Attainder, contrary to Clause 3, Section 9, of Article 1, of the United States Constitution. And in support of this motion, the Defendant relies upon the cases of Cummings v. Missouri, in 4 Wall, U. S. Reports, Page 277; also he relies upon the case of Gaines v. Buford, 1 Dana (Ky.) 481; he relies upon the case of Kentucky v. Jones, 10 Bush (70 Ky.) 725; Upon the case of In re Yung Sing Hee, Circuit Court of Oregon, 36 F. 437; and he relies upon Davis v. Berry, 216 F. 413.

Now, may Your Honor please, this case of Gummings v. Missouri, following the Civil War, the Legislature of the State of Missouri enacted a measure whereby all priests and all preachers and ministers were compelled to sign an oath regarding their past affiliation with the Confederacy. And the priest, Cummings, of course he had a right to engage in his profession, and there was no provision made under the legislation whereby he could have a criminal trial, and his defenses presented, and so the Supreme Court, in a long decision, which is the leading case relative to bills of attainder here in America, stated that it was a bill of attainder, depriving the individual of his fundamental right of engaging in religious activity, without a judicial proc

The next case is that of Gaines v. Buford.

THE COURT: Let me ask you whether a motion for a new trial has been filed yet, and has the notice of appeal been given?

MR. SCHMIDT: I have these prepared but—

THE COURT: No, has a motion for a new trial been filed in accordance with the rule?

MR. SCHMIDT: No, If Your Honor, please, I do not intend to file a motion for a new trial.

THE COURT: You do not intend to?

MR. SCHMIDT: No.

THE COURT: How do you propose to raise all these questions unless a motion for a new trial is filed and overruled, and then goes to a reviewing court, how do you intend to give notice of appeal, contrary to the rule and the statute?

MR. SCHMIDT: It is not necessary, if Your Honor please, to file a motion for a new trial in order to be in a position—

THE COURT: I understood that that was the purpose of your delay, that you wanted to file a motion for a new trial. That is the reason you asked me to delay imposition of sentence, so you could file a motion for a new trial.

MR. SCHMIDT: The purpose, if Your Honor please, was to prepare, and I have prepared, and have used the time to prepare the notice of appeal, and also to prepare the motion for verified petition, or for leave of Court to prosecute appeal in the form of paupers, and the verified petition, with the other papers, have been drawn up. And it is not possible to get all these things ready since the other day, inasmuch as I had another case over before—

THE COURT: The Court can't change the court rules, because it is not possible to get them ready, Mr. Schmidt.

MR. SCHMIDT: That is true.

THE COURT: I am not making laws, all I am doing is interpreting the laws. I can't change rules and laws for you, because you can't get ready.

MR. SCHMIDT: Yes.

THE COURT: I understood you to say to me that you wished this matter delayed so that you could file a motion for a new trial. That is specifically what you said.

MR. SCHMIDT: A motion for a new trial—

THE COURT: And you likewise said to me that you

wanted to point out some errors in the charge of the Court.

MR. SCHMIDT: That is true.

THE COURT: Now, what you did—now, you listen to me.

MR. SCHMIDT: Yes.

THE COURT: Instead of pointing out to the Court the matters to which you have taken exception, contrary to what is this Court's understanding of what counsel ought to do, instead of pointing it out to the Court, you whispered it into the record. Now, you have tried to speak loud when the jury was present, but when it came to the question of calling the Court's attention to certain things, which you considered error, you whispered into the record. Now, I want to understand that. I understood fully and clearly, that the purpose of your request for a delay was to file a motion for a new trial. Now, you come in here and you start to argue the bill of attainder to me, the same thing you have argued throughout this case. Haven't you argued that case, haven't you pointed out that case to me at least three times in the course of the trial?

MR. SCHMIDT: The Cummings case, I believe.

THE COURT: I think I have heard you mention that three times in the course of the trial.

MR. SCHMIDT: However, if Your Honor please, I believe that on the matter, these other cases, I don't think, have been mentioned here. And, furthermore, that was in argument on the motion to quash the indictment.

THE COURT: The rules of this court provide, save as provided in Sub-Division (3) of this rule, motion in arrest of judgment, and that is exactly what you are doing here now—

MR. SCHMIDT: That is right.

THE COURT: (Continuing) Or for a new trial, shall be made within three days after verdict or finding of guilty. Now, this verdict was returned on Monday. This is Friday.

MR. SCHMIDT: I understand.

THE COURT: I want to point out to you that you, as well as the Court, must comply with rules, and it was your duty, as well as the Court's duty, to read these rules and determine within what time you may make a motion in arrest of judgment.

Now, is there a written motion in arrest of judgment here?

MR. SCHMIDT: No.

THE COURT: Why not?

MR. SCHMIDT: If Your Honor please, during the time that I had seen you, I went to Philadelphia.

THE COURT: I don't care whether you had gone to Timbuktu, Mr. Schmidt, the rules and the laws must be complied with. If your practice is so extensive as to prevent you from giving each case such attention as it requires, you must retain the service of an assistant, or someone to comply with the rules. This Court cannot, and will not, change rules for you, and cannot do it, whether it wants to or not.

Now, I call that to your attention, I asked you specifically whether you intended to file some pleadings, you said you did. Now, this is the rule. Do you want to read it now? There it is. This is a motion you are making that must be made within three days.

MR. SCHMIDT: Does it specify the motion notwithstanding the verdict, though?

THE COURT: Now, Mr. Schmidt, I am not going to answer questions.

MR. SCHMIDT: I see.

THE COURT: I am the one who asks the questions in this Court. You read the rules. Hand the rules to counsel. You read the rules.

THE CLERK: (Hands document to Mr. Schmidt.)

THE COURT: You will recall I asked if you were admitted to practice in this Court a few days, and you said you were.

MR. SCHMIDT: That is true.

THE COURT: Having been admitted in this court, you are bound by the rules of this Court. I have listened to your arguments now for days, repeating the same thing.

MR. SCHMIDT: Well, if Your Honor please, we will submit this—

THE COURT: I don't want to deprive you of any rights. These are the rules of the Supreme Court, these aren't the rules of this Court. You are citing to me what the Supreme Court has said. It would occur to me that counsel would at least read the rules of the Supreme Court of the United States before he presumes to come into this Court and tell the Court how the court is run.

MR. SCHMIDT: I see. Your Honor please, having noted that, then I will present the Defendant for sentence at this time.

THE COURT: You save your record, now. Now, I don't want anything done here, or anything said whereby this Court has deprived you of any rights, but this Court is going to point out to you, as well as other lawyers who have not complied with rules, that you are not an exception to the rule, Mr. Schmidt.

MR. SCHMIDT: That is true. I don't want to be an exception to the rule.

THE COURT: Now, you make your motion, whatever you think is proper to the record, but I don't want lengthy argument, when you are out of rule.

MR. SCHMIDT: Your Honor please, in view of the present status of the matter, the Defendant asks for a ruling on the motion that is just stated, without further argument.

THE COURT: The ruling on what motion? The motion is to do what?

MR. SCHMIDT: For judgment notwithstanding the verdict.

THE COURT: The motion will be overruled. I think you made that motion the last time, didn't you?

MR. SCHMIDT: To which the record will respectfully show an exception.

THE COURT: I think there is a further rule of this Court that motions must be made in writing in these cases. And I suggest to you that the next time you appear in this Court, that you look at the Supreme Court rules, as well as the rules of this Court.

MR. SCHMIDT: I shall.

THE COURT: Instead of imposing on the Court in the manner in which I think you have imposed now.

Is there anything further? I want to be sure, now. Again I repeat that the rights of your client are saved. That I am going to insist on, as well as insist on counsel complying with rules.

MR. SCHMIDT: If Your Honor please, I have nothing further to state, unless the Defendant himself wishes to state something before imposing sentence.

THE COURT: It is the judgment of this Court—do you wish to say anything?

THE DEFENDANT: No.

THE COURT: It is the judgment of this Court that sentence of five years will be imposed.

MR. SCHMIDT: May the record respectfully show an exception to the judgment.

Your Honor please, at this time, we give the assurance that this case will be appealed, and we ask that appeal bond be denominated by the Court.

THE COURT: The Court sees no substantial question of law here, different from all the other cases that have been tried and presented here, many of them which you have argued in the Circuit Court yourself; and I think that the law is clear. I will hear from the District Attorney. If the District Attorney feels that there is a substantial question here.

MR. FEIGHAN: No, Your Honor, I feel there is no substantial question.

THE COURT: All right. The motion will be overruled.

MR. SCHMIDT: Respectfully excepted to.

Now, if Your Honor please, the Defendant in this case wishes to take up this appeal on the pauper's form, as provided by Title 28, 75, C-', Sec. 832-837; also, in accordance with the rules of this Circuit, Rules 18 and 10; and the verified petition with the motion will be filed with the appeal within the five-day period.

THE COURT: Well, I understand that when I fixed bail here at $5,000, within a few minutes thereafter, bail was furnished.

MR. SCHMIDT: That's right.

THE COURT: I want to say to you, Mr. Schmidt, that I want to be sure that whatever is presented in your affidavits must be well taken.

MR. SCHMIDT: Yes.

THE COURT: I will not listen to any pleas by way of pauper's affidavit if this man is financially fixed so as to prosecute error here. I understand from what you have said to me, and what he testified to, that his family are in comfortable situations, both his and his wife's family, who have been assisting him in this situation. Now, pauper's affidavits are for the purpose of providing relief to people who are poor. If he is poor, he is entitled to take advantage of those requirements. But, from what I heard from

the witness stand here, I wonder how such an affidavit may be presented.

MR. SCHMIDT: If your Honor please, I believe that I want to be reasonable with the Court, and with the client, too. While the Defendant has a father that owns land, real estate, and, while also, as stated on the witness stand, his father-in-law and mother-in-law own real estate also, this individual has been dependent for some time upon donations and contributions from his church congregation, and he has the bare necessities of livelihood; and, also, there is a Plymouth automobile, which was given to him, which he has used.

THE COURT: An automobile was given to him by whom?

MR. SCHMIDT: By his father-in-law.

THE COURT: What kind of an automobile was that?

MR. SCHMIDT: A '41 Plymouth. He has been using this in his profession, and now is.

THE COURT: That was given to him as a present?

MR. SCHMIDT: That is true, in order that he might keep on in the work. Now, his wife is a Pioneer minister also—I am just disclosing the whole set of facts.

THE COURT: I think that 1941 Plymouth may well bring sufficient funds, under present conditions, to prosecute error in this case.

I wonder, I am just calling it to your attention, I want to be sure, now, that you fully appreciate your obligation to this Court in presenting this affidavit.

MR. SCHMIDT: Another thing, if Your Honor please, that is the reason that I present it, that is, concerning the facts in the case, that is, I wanted to get the reaction of the Court to it. Now, if we rely upon this individual alone, as I understand, he is dependent upon donations from his congregation. This automobile, a 1941 Plymouth, is used by his wife in the carrying on of her profession.

THE COURT: Well, I thought it was his?

MR. SCHMIDT: It is his, but when—

THE COURT: He wants to leave an automobile. He wants to avail himself of a pauper's affidavit, so far as Court expenses are concerned, but he wants to provide his wife with an automobile. Is that right?

MR. SCHMIDT: To carry on her ministerial profession.

THE COURT: Mr. Reporter, how much will this record cost? Can you make an estimate on it?

THE COURT REPORTER: I am unable to state, without checking my notes, but I should judge about 80 to 100 dollars.

THE COURT: The printing?

MR. SCHMIDT: I have had something to do with the printing of this case (indicating document).

THE COURT: You must have a printing establishment at your disposal, because you seem to file all these printed motions, and so you must have some idea how much it will cost.

MR. SCHMIDT: I have an idea, if this case goes to print, and for the photostating, and that sort of thing, on a similar case, it ran over $500 for the record alone, I believe it was $500, and, also, the brief cost approximately $130.

THE COURT: And the affidavit must show, as I understand, not only that he does not have funds, but he is unable to obtain the funds. Now, what you have said to me, you have just proved in exactly the opposite, Mr. Schmidt. I am just asking you again, as an officer of this court, you are a lawyer and my understanding is that a lawyer must understand those things, not to throw it at the Court.

MR. SCHMIDT: Now, I don't want to do that.

THE COURT: And have the Court decide it, and keep the Court in darkness in so far as this man's ability is concerned. It seems to me that you are fully acquainted with the financial condition of this man, and before you file such an affidavit in his behalf, it is your duty to advise him whether he has such a right to do it, not to have the Court decide it.

MR. SCHMIDT: Now, if Your Honor please, the position that I held was to get the reaction of the Court. I will advise my Defendant to not file a pauper's petition in this case, and I will also advise the relatives that if they wish to take the case up on appeal, that it will be necessary to look to them. The reason that I brought this matter up, Your Honor, I don't want to do anything, or take the step toward this, in this matter, without getting the reaction of the Court, and disclosing the facts in the case.

THE COURT: Well, Mr. Schmidt, do you think it is fair to the Court to get the reaction of the Court? The

Court doesn't know what his financial condition is, other than what the Court heard here. Now, you tell me about a 1941 Plymouth. You are the one to decide, not I, whether or not such an application should be made to the Court.

MR. SCHMIDT: Yes.

THE COURT: Now, if you want to file it, go ahead, I will rule on it, and I will hear it. I am saying to you that I want it definitely understoond that I do not wish to have pleadings filed when the party fully knows that there is no basis for them.

MR. SCHMIDT: I see. Well, I wouldn't want to file a pleading here, if Your Honor please, if the factual situation doesn't warrant it.

THE COURT: Well, does it warrant it? You are the one to know. You know your client. I don't.

MR. SCHMIDT: The only thing that was in my mind, was about this automobile, and its use in professional services, and I doubted very much whether—

THE COURT: Professional service of this Defendant?

MR. SCHMIDT: I suppose of the Defendant and of his wife, both of them.

THE COURT: Who has title to the car?

MR. SCHMIDT: The Defendant.

THE COURT: All right. I think you will find, Mr. Schmidt, that a 1941 Plymouth will, undoubtedly, cover the expense of this appeal.

MR. SCHMIDT: Yes.

THE COURT: Now, you decide whether you wish to file it or not.

MR. SCHMIDT: Yes. Well, definitely, I am under the impression now that it will not be filed. I thank Your Honor for any time of the Court that has been taken in this matter. The appeal, the notice of appeal will be filed within the five-day period.

I, WILLIAM L. MORSE, certify that I acted in the capacity of official Court stenographer in the trial of the case of United States of America vs. George William Dodez, defendant, had in the United States District Court for the Northern District of Ohio, Eastern Division, that I made shorthand notes of the testimony and proceedings

had at said trial, and that the foregoing is a true and correct transcript of all of the testimony and together with the exhibits constitute all of the evidence in said trial with all of the offers of counsel, the objections thereto, the rulings thereon and the exceptions thereto and the proceedings had in court at the time of the said trial.

Dated this 13th day of March, 1945.

WILLIAM L. MORSE,
Acting Official Court Stenographer

I, E. B. FREED, Judge of the United States District Court for the Northern District of Ohio, Eastern Division, having been tendered the foregoing Bill of Exceptions according to law by the appellant in the case of United States of America vs. George William Dodez, defendant-appellant, do hereby certify said Bill of Exceptions as true and correct, and together with the exhibits constitutes all of the evidence in this case, and the same is hereby signed, sealed, settled and ordered filed, and is hereby constituted a part of the record in said case this 13th day of March, 1945.

E. B. FREED,
Judge.

Approved:

FRANCIS X. FEIGHAN,
Assist. United States Attorney.

VICTOR F. SCHMIDT,
Attorney for Defendant-Appellant.

TRIAL RESUMED, RENEWAL OF MOTION TO DISMISS OVERRULED; RENEWAL OF MOTION FOR DIRECTED VERDICT AND JUDGMENT OF ACQUITTAL, OVERRULED; TRIAL CONCLUDED; VERDICT OF GUILTY AS CHARGED, IMPOSITION OF SENTENCE SUSPENDED UNTIL DECEMBER 15, 1944, BOND FIXED IN SUM OF $5,000.00.

(Entered December 11, 1944, E. B. Freed, J.)

This day again came the United States Attorney, the defendant with his attorney and the jury heretofore impanelled and sworn herein and the trial continued.

Thereupon the jury heard the evidence adduced on behalf of the defendant resumed and concluded and the defendant renewed the filing of the motion to dismiss, which motion was overruled without argument.

Whereupon the defendant renewed the filing of its motion for a directed verdict and judgment of acquittal, which motion was overruled without argument.

And the jury heard the argument of attorneys and the charge of the court and the hour for lunch having arrived, by consent of attorneys, the court allowed the jury to separate for lunch.

And the jury returned and retired to its room in charge of a sworn officer of this court to deliberate upon its verdict.

Now comes the jury with its verdict in writing, signed by its foreman, as follows:

"United States of America, Northern District of Ohio. Eastern Division ss. October Term, A. D. 1944. The United States, Plaintiff, vs. George William Dodez, Defendant. In the District Court of the United States, No. 18256. VERDICT We, the jury in this case, being duly impanelled and sworn do find the Defendant Guilty. Wm. F. Heinemann, Foreman."

which verdict was read by the clerk of this court within the hearing of the jury and to which they gave their assent.

Whereupon the court suspended imposition of sentence until December 15, 1944, and the defendant is ordered to give a bond in the sum of $5,000.00 with sureties to the approval of the clerk and in default thereof is committed.

WM. F. HUNEMANN, *Foreman*

VERDICT
(Filed December 11, 1944)

We, the jury in this case, being duly impanelled and sworn, do find the Defendant Guilty.

RENEWAL OF MOTION TO DISMISS
(Filed December 11, 1944)

Comes now the defendant at the close of all the evidence and renews his motion to dismiss the action for the following reasons:

1. The Government still fails to prove a cause of action against the defendant. It has failed to prove the validity of the order to report, and it has failed to prove that the defendant had a responsibility to report since he is exempt by Section 5 (d) of the Selective Training and Service Act of 4940 as amended.

2. The undisputed evidence shows that the defendant is not guilty as charged in the indictment, and any further proceedings by this Court to deprive him of his liberty and property would be in violation of the due process and other rights guaranteed the accused under Article Three of, and the Fifth and Sixth Amendments to the Constitution of the United States.

3. The local board, the appeal board and any other agencies of the Selective Service System were without jurisdiction in law to place the defendant in any other than Class IV-D when the undisputed facts show the defendant to be a minister at all times since his registration under the Selective Service System; and no agency of the Selective Service System had jurisdiction to change the ministerial status of the defendant on the evidence unless such were colorable or fraudulent.

4. The order to report issued by the local board is invalid and void for the local and appeal boards and any other agencies were without jurisdiction in law to take any steps to compel service and training from the defendant because under Title 50, U. S. C. A. 305 (d) he is exempt.

5. To exclude defendant's evidence and proof that he is exempt under the Selective Training and Service Act of 1940 as amended is a denial to be heard and to make his

constitutional rights specifically stated in Assignment of Error No. 5.

ASSIGNMENT OF ERROR NO. 10

The trial Court erred specifically in his charge to the jury in the first place by which, in substance, he stated that the local boards have power to determine the exemptions and deferments under the Act, without giving consideration in the charge to the exceptions when the administrative processes are complete, otherwise it would be a violation of the Bill of Attainder Clause 3 in Section 9 of Article I of the Constitution of the United States. It is specifically objected, on the part of the Defendant, that the exemptions are matters for Congress to determine in this matter, and not for the local board, especially when the status of the minister is involved, and when there is no contradiction that the individual is not a minister. This objection with the reasons here given was specifically stated by counsel following the general charge as specifically stated in the record.

ASSIGNMENT OF ERROR NO. 11

The trial Court erred specifically in his general charge, in the second instance in which he used the words in substance that the action of the local board is final. "This is objected to, without there being an additional qualification, as in the instant case, where the individual had exhausted all of his administrative remedies, and, therefore, the Defendant believes that the action of the local board is not final, but susceptible of review, even in a criminal case; otherwise, to make final the holding of the local board, would be making of the local board the final arbiter and making of this Government a government by men and not by law, which is contrary to Clause 3, in Section 9 of Article I of the United States Constitution, and contrary to the due process and other rights prescribed under the Fifth and Sixth Amendments to the Constitution." Which error was specifically pointed out following the general charge and made a part of the record.

ASSIGNMENT OF ERROR NO. 12

The trial Court erred specifically in his charge to the jury as pointed out in the record immediately following the general charge, that on April 21, 1944, the Defendant did knowingly, willfully, unlawfully and feloniously failed to perform such duty, as a statement of fact, without qualifi-

cation, near the outset of the charge. This, in substance, would lead to a conclusion of fact which only the jury could decide, and would be in violation of the due process and the right of trial by jury under the Fifth and Sixth Amendments to the United States Constitution.

ASSIGNMENT OF ERROR NO. 13

The trial Court erred specifically in his charge to the jury, pointed out by counsel for Defendant as a matter of record immediately following the charge, in which the Court defined reasonable doubt as being a substantial doubt, without qualifying what the word "Substantial" means, and could mean a preponderance, or any other weighty doubt, supported by all or substantial evidence.

ASSIGNMENT OF ERROR NO. 14

The trial Court erred in omitting necessary and material requirements that the Government had to make before conviction, the Court omitted in his charge, when delineating steps of the Selective process necessary for the Government to prove, the matter of a fair hearing which is material in this case, that there was an appeal taken, that the defendant had a duty to perform under the Selective Training and Service Act of 1940 before it was necessary for him to report,—which instruction was contrary to the due process and other rights guaranteed under the Fifth and Sixth Amendments.

ASSIGNMENT OF ERROR NO. 15

There was error in the verdict of "Guilty" as found by the jury, to which the Defendant excepted as being contrary to the undisputed facts that the Defendant was none other than a duly ordained minister of religion at all times while under the jurisdiction of the Selective Service System, was exempt, and on account of his exhausting his administrative remedies he was in a position to assert his defense as a minister but was prevented from having that defense passed upon by the jury.

ASSIGNMENT OF ERROR NO. 16

The trial Court erred in overruling the Motion for Judgment Notwithstanding the Verdict to which the Defendant duly excepted, on the basis of the constitutional reasons stated at the time of making the motion as a matter of record.

ASSIGNMENT OF ERROR NO. 17

The trial Court erred in his judgment which was accord-

defense in response to the indictment, and such action constitutes a transfer and surrender of the judicial power of the United States District Court to the administrative agency, all contrary to Article Three of, and the Fifth and Sixth Amendments to the United States Constitution.

6. To limit the issue in this action to the one question as to whether or not the defendant reported is equivalent to instructing the jury to return a verdict of guilty and is a denial of a fair trial, contrary to the Third Article of, and the Fifth and Sixth Amendments to the Constitution of the United States.

7. The construction given the Selective Training and Service Act of 1940 as amended by the court in denying the defendant due process and other rights makes of said Act and Regulations thereunder a bill of attainder,—all contrary to Clause 3 of Section 9 of Article 1 of the United States Constitution.

8. To compel the defendant to take the oath of induction before he is permitted to assert his defense, makes of the Selective Training and Service Act of 1940 as amended and the Regulations thereunder a bill of attainder,—all contrary to Clause 3 of Section 9 of the First Article of the United States Constitution.

The defendant reserves an exception to any adverse ruling on this motion of renewel for a directed verdict.

VICTOR F. SCHMIDT,
8469 Pine Road,
Rossmoyne, Ohio,
Attorney for Defendant.

The same authorities for this motion are relied upon as appended to the original motion to dismiss.

RENEWAL OF MOTION FOR DIRECTED VERDICT AND JUDGMENT OF ACQUITTAL

(Filed December 11, 1944)

Comes now the defendant at the close of all the evidence and renews his motion for a directed verdict and judgment of acquittal for the following reasons:

1. The undisputed evidence still shows the defendant is not guilty as charged in the indictment, and there is no evidence to constitute a crime under the laws of the United States, and any further proceedings to deprive him of his liberty and property is in violation of the due process and other rights guaranteed the accused in a criminal action under Article Three of, and the Fifth and Sixth Amendments to the Constitution of the United States.

2. The defendant is protected from the alleged crime because the Selective Training and Service Act of 1940 as amended, Title 50 U. S. C. A., Section 305 (d) exempts regular and duly ordained ministers.

3. The actions of the local and appeal boards in placing defendant in any other than Class IV-D when the undisputed facts show defendant to be a minister are without jurisdiction in law and hence void and of none effect; and no agency of the Selective Service System has authority to change the ministerial status of the defendant.

4. The order to report issued by the local board is invalid and void for the local and appeal boards or any other agency were without jurisdiction in law to take any steps to compel service and training from the defendant when the Selective Training and Service Act of 1940 as amended exempts the defendant.

5. The construction and application made by the Court of the Selective Training and Service Act of 1940, as amended, to the defendant whereby he is prevented from asserting his defense as a minister deprives the accused of due process and other rights guaranteed by the Third Article of, and the Fifth and Sixth Amendments to the Constitution of the United States.

6. To exclude defendant's proof that he is a regular and duly ordained minister of religion and exempt under the Selective Training and Service Act of 1940 as amended is a denial to be heard in response to the indictment, and such action constitutes a transfer and surrender of the judicial power of the United States District Court to an administrative agency,—all contrary to Article Three of, and the Fifth and Sixth Amendments to the Constitution of the United States.

7. To withdraw matters of evidence which constitute a valid defense in a criminal action from the consideration of

the jury invades the province of that body, all contrary to Article Three of, and the Fifth and Sixth Amendments to the Constitution of the United States.

8. The construction and application made by the Court of the Selective Training and Service Act of 1940, as amended, to the defendant whereby he is prevented from asserting his defense as a minister deprives the accused of due process and other rights guaranteed by the Third Article of, and the Fifth and Sixth Amendments to the Constitution of the United States.

9. The construction given the Selective Training and Service Act of 1940 as amended by the court in denying the defendant due process and other rights makes of said Act and the Regulations thereunder a bill of attainder,—all contrary to Clause 3 of Section 9 of the First Article of the Constitution of the United States.

10. To compel the defendant to report for induction or for work of national importance before he is permitted to assert his defenses, makes of the Selective Training and Service Act of 1940 as amended and the Regulations thereunder a bill of attainder,—all contrary to Clause 3 of Section 9 of the First Article of the Constitution of the United States.

The defendant reserves an exception to any adverse ruling on this renewal of the motion to dismiss.

VICTOR F. SCHMIDT,
8469 Pine Road,
Rossmoyne, Ohio,
Attorney for Defendant.

The same authorities for this motion are relied upon as appended to the original motion to dismiss.

JUDGMENT AND COMMITMENT

On this 15th day of December, 1944, came the United States Attorney, and the defendant George William Dodez, appearing in proper person, and by counsel and,

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-

entitled cause, to wit: did knowingly, wilfully, unlawfully and feloniously fail to report for work of national importance, contrary to the provisions of the Selective Training and Service Act (guilty on one count) and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT.

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of five (5) years and assessed costs in the amount of $37.45.

F. C. I. Ashland, Ky.

Filed December 15, 1944.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(*Signed*) E. B. FREED,
United States District Judge.

NOTICE OF APPEAL
(Filed December 15, 1944)

Name and Address of Appellant: George William Dodez, Route No. 2, Orrville, Ohio.

Name and Address of Appellant's Attorney: Victor F. Schmidt, 8469 Pine Road, Rossmoyne, Ohio.

Offense: "did fail to report for work of national importance as ordered by said Board; contrary to the provisions of the Selective Training and Service Act."

Date of Judgment: December 15, 1944.

Brief Description of Judgment or Sentence: Committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five years.

Name of Prison where now Confined, if not on Bail: In custody of the United States Marshall at Cleveland, Ohio.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the judgment above-mentioned on the grounds set forth below.

GEORGE WILLIAM DODEZ,
Appellant.

Dated: December 15, 1944.

Receipt of copy and service hereof acknowledged this 15th day of December, 1944.

(S) FRANCIS X. FIEGHAN,
Assistant U. S. Attorney.

Grounds of Appeal hereto appended.

Grounds for appeal:

1. The trial court erred in limiting the defenses of the defendant, after the accused had exhausted his administrative remedies, and excluding the fact that the defendant was at all times while under the jurisdiction of the Selective Service System a regular and duly ordained minister of religion, and therefore exempt from service under the

Selective Training and Service Act of 1940, to which the defendant duly excepted.

2. The trial court erred in overruling the defendant's motion to dismiss the action presented at the close of the Government's case, to which ruling of the court the defendant duly excepted.

3. The trial court erred in overruling the defendant's motion for a directed verdict and judgment of acquittal at the close of the Government's case, to which the defendant duly excepted.

4. The trial court erred in overruling the defendant's renewal of the motion to dismiss at the close of all the evidence, to which ruling of the court the defendant duly excepted.

5. The trial court erred in overruling the defendant's renewal of the motion for a directed verdict and judgment of acquittal at the close of all the evidence, to which ruling of the court the defendant duly excepted.

6. The verdict of the jury is contrary to the evidence.

7. The defendant excepts to the judgment of the court as being contrary to the law and the evidence, and requests a reversal thereof.

VICTOR F. SCHMIDT,
Attorney for Appellant.

ORDER

(Entered January 4, 1945, E. B. Freed, J.)

Pursuant to notice, counsel for the parties this day appeared for directions for preparation of the record herein on appeal. The undersigned trial judge hereby directs appellant on or before January 13, 1945 to procure his bill of exceptions setting forth the proceedings upon which he wishes to rely in addition to those shown by the clerk's record as described in Supreme Court Criminal Procedure Rule VIII and lodge the same with the clerk, at which time he will file with the clerk his assignment of the errors of which he complains and also a designation stating the portion of the clerk's record to be included in the record on appeal. Appellant will thereupon notify the United States

Attorney of the time, not more than three days thereafter, when he will ask the trial judge to settle and sign his bill of exceptions. Such bill must conform to Rule VIII of the General Rules of the Supreme Court, will be settled not later than January 27, 1945 and upon such settlement appellant will file the same with the clerk.

Upon the filing of the assignment of errors and of the bill of exceptions after settlement, the clerk will proceed as provided by Supreme Court Criminal Procedure Rule IX and Circuit Court of Appeals Rule 13, Section 2.

E. B. FREED,
United States District Judge.

STIPULATION
(Filed January 10, 1945)

We, the attorneys for the respective parties, do hereby stipulate that the time to lodge appellant's Bill of Exceptions be extended to March 14, 1945 same to be settled and filed by March 28, 1945. and that the Court may enter an order accordingly, notice by the Clerk being hereby waived.

It is so ordered:

FRANCIS X. FEIGHAN,
Assistant U. S. Attorney,
For Plaintiff-Appellee.

E. B. FREED,
U. S. District Judge.

VICTOR F. SCHMIDT,
Attorney for Defendant-Appellant.

ORDER EXTENDING TIME FOR LODGING, SETTLING AND FILING BILL OF EXCEPTIONS
(Filed January 10, 1945)

This day the stipulation of the attorneys for the respective parties for extension of time to lodge, settle and file

appellant's Bill of Exceptions having been duly considered

IT IS HEREBY ORDERED that the time to lodge appellant's Bill of Exceptions be extended to March 14, 1945, same to be settled and filed by March 28, 1945 without further notice by the Clerk.

E. B. FREED,
U. S. District Judge.

ASSIGNMENT OF ERRORS
(Filed March 26, 1945)

Now comes the appellant by his attorney and says that in the proceedings herein held in the United States District Court for the Northern District of Ohio, Eastern Division, at Cleveland, there were errors manifest and legal grounds upon which he relies for reversal of judgment in this case. Said errors are as follows, to wit:

ASSIGNMENT OF ERROR NO. 1

The trial court erred in overruling Defendant's motion to quash the indictment, which said indictment made an unconstitutional application of the Selective Training and Service Act of 1940 as specified on the face of said Motion to Quash, to the overruling of said motion the Defendant duly excepted.

ASSIGNMENT OF ERROR NO. 2

The trial court erred in overruling Defendant's motion to dismiss at the close of the Government's case, which said motion raised constitutional grounds stated upon the face of the motion, and to which ruling of the court the Defendant duly excepted.

ASSIGNMENT OF ERROR NO. 3

The trial court erred in overruling Defendant's motion for a directed verdict and judgment of acquittal on constitutional grounds stated on the face of the motion, at the end of the Government's case, and to which ruling of the court the Defendant duly excepted.

ASSIGNMENT OF ERROR NO. 4

The trial court erred in sustaining objection of the Government to the question found on page 38 of the original

Bill of Exceptions relative to the Defendant's schedule of ministerial duties in the following form:

Q. Now, have you worked out a schedule of the duties that you perform as a minister in connection with your church congregation and your other ministerial activities, a weekly schedule?

A. Yes, I have.

Q. Well, now, what are the features of that schedule?

MR. FEIGHAN: Your Honor, I want to object at this time to this testimony on the ground that the indictment charges his failure to carry out the duty required in answering an order of the draft board, and also objecting on the grounds that the Courts have ruled that the claim as a minister is not a valid claim, that is, a valid defense to this indictment.

THE COURT: The objection will be sustained.

You may make your proffer and dictate that into the record right now, what you intend to have him show. I permitted him to make those statements so far, but the rest of it, you can make a proffer of it.

MR. SCHMIDT: That is, to the exception to the ruling of the Court, the record will kindly show, as a proffer in behalf of the Defendant: (On account of the extreme length of the proffer reference is here made to the printed record).

The Defendant definitely assigns as error the exclusion of the answer to this question, and the ruling of the Court on the objection of the Government as being contrary to the due process clause of the Fifth Amendment of the Constitution of the United States in that it deprives Defendant of his absolute defense of a minister and exemption under the Selective Training and Service Act of 1940.

ASSIGNMENT OF ERROR NO. 5

The Court at the time of trial erred in sustaining the objection of the Government to the question in the following form, contrary to the Fifth Amendment of the United States Constitution, and to which ruling of the Court the Defendant duly excepted:

Q. (Page 42 of original Bill of Exceptions) Now, what are the events that show arbitrariness of the local board upon which you rely as your defense?

MR. FEIGHAN: I object, your Honor.

THE COURT: Objection sustained.

MR. SCHMIDT: And with an exeeption. We wish to make an offer of proof.

(Here follows a lengthy offer of proof for which reference to the printed record is made and incorporated by such reference to avoid unnecessary duplication in conformity with the rules of the Circuit Court of Appeals).

Such ruling of the trial Court certainly deprives defendant of due process contrary to the Fifth Amendment of the Constitution of the United States, and makes of the Selective Training and Service Act of 1940 and the Regulations thereunder a bill of attainder contrary to Clause 3, Section 9 of Article I of the Constitution of the United States; also such ruling of the Court abridges the right of the defendant to a trial by jury contrary to the Sixth Amendment of the United States and such construction transfers and surrenders the judicial power of the United States courts in the trial criminal cases from said courts to the draft boards so as to permit said draft boards to determine the guilt of the defendant, a judicial function, contrary to Article III of the Constitution of the United States.

ASSIGNMENT OF ERROR NO. 6

The trial Court erred in sustaining the objection of the Government to the following question found at page 67 of the original Bill of Exceptions, and the pertinent parts of the record are in the following form:

"Q. Now, what course of study did you pursue in becoming a minister?

THE COURT: That is quite true. The original questions put by defense counsel to recite the reasons why he did not answer the call for induction to a camp of national importance. Now, to that extent, I will permit the testimony, to show intent and motive in refusing, or in committing the offense charged.

"But now, you are going further, Mr. Schmidt. Now you are trying to prove the fact that he is a minister of the Gospel. The Government is willing to admit that he claims to be.

"MR. SCHMIDT: I would refrain from arguing on that point, because I don't think that the admission of the claim would be sufficient, that is, on the part of

the Government, to warrant anything in favor of the Defendant in maintaining his case. But, if the Government will stipulate that he is a minister, then that is a different thing.

"MR. FEIGHAN: The Government, if it came to that, the Government would dismiss.

"THE COURT: All right, ask your next question.

"MR. SCHMIDT: We will ask the record to show an exception, and over the exception, if the Defendant were to continue, he would list these following ten subjects, which were additionally pursued.

"THE COURT: Well, if you want to dictate that into the record."

Whereupon an offer was made which is incorporated at this place by reference to avoid duplication. Such limitation of the issue by the Court and depriving the Defendant of his absolute defense of being a minister of religion and exempt under the Act and Regulations makes of said Act and Regulations a bill of attainder contrary to Clause 3, Section 9 of Article I of the Constitution of the United States, contrary to the due process clause of the Fifth Amendment of, and contrary to the right of trial by jury guaranteed by the Sixth Amendment of the Constitution of the United States.

ASSIGNMENT OF ERROR NO. 7

The trial Court erred in its urgent desire to get the case over with and curtailing the answers of the defendant upon material matter relative to the ministerial capacity of various individuals affiliated with the Watchtower Bible and Tract Society, Inc. and the relative position of the Defendant as a minister therein. The following is an example taken from the original Bill of Exceptions at page 95:

"Q. Would you mind relating to the Court and jury the statement relative to the individuals affiliated with the Watchtower Bible and Tract Society, and the number of the witnesses in the various capacities as recognized by the Watchtower Bible and Tract Society?

"THE COURT: Let us not get into that, now. You have asked him the question. Let him answer it. He doesn't have to go into a long-winded explanation. Just answer the question.

"MR. SCHMIDT: Pardon me. I believe that the

Court and jury are entitled to know about these 57,000 individuals, as to what capacities they occupy. I want to be as short as possible, but we want to know, in order to distinguish this class of individuals from the other group of individuals.

"A. Well, these individuals devote a part of their time in publishing the Message of Almighty God in the territory that they are assigned by the local church organization. But, then, there are affiliated with the Watchtower Bible and Tract Society, 3,168 what are known as general pioneers. These devote 150 hours and more of their time in preaching the Gospel of the Kingdom; of which group I am classified under. But there are also another group of 1,334, which are known as Special Pioneers. Now, these are sent by the Society to territory that the Society might designate, and are subject to changing from time to time—

"MR. FEIGHAN: Your Honor, I am objecting to this. He said two minutes.

"THE COURT: Objection sustained."

The Defendant claims that the same constitutional rights were violated herein as stated in Assignment of Error No. 6.

ASSIGNMENT OF ERROR NO. 7A

The trial Court erred in overruling the Renewal of Motion to Dismiss, and in doing so violated the same constitutional rights as asserted in Assignment of Error No. 5. Defendant excepted.

ASSIGNMENT OF ERROR NO. 8

The trial Court erred in overruling the Renewal of Motion for Directed Verdict at the close of all the evidence, to which ruling the Defendant duly excepted, and the same constitutional provisions were violated as specifically stated in Assignment of Error No. 5.

ASSIGNMENT OF ERROR NO. 9

The trial Court erred in not giving Defendant's special instruction No. 1 and each succeeding Defendant's special instruction from 2 to 48 consecutively numbered, inclusive, as requested before arguments of counsel and to which the Defendant duly excepted, which special instructions with the Court procedure at the time are fully set out in the record and incorporated at this place by reference to avoid lengthy repetition of material. These ommissions from the charge to the jury were violative of the Defendant's

ing to the record, "It is the judgment of this Court that sentence of five years will be imposed." Defendant duly excepted to this judgment.

ASSIGNMENT OF ERROR NO. 18

The trial Court erred in refusing to allow bail for enlargement of Defendant on appeal of his case, to which ruling of the Court the Defendant duly excepted.

For the above assigned errors the defendant asks that the judgment of the trial Court be reversed, and the Defendant be granted such other relief as is proper in the premises.

Confidently submitted,

VICTOR F. SCHMIDT,
Attorney for Defendant-Appellant.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

(Filed March 26, 1945)

To the Clerk:

Please prepare and certify to the United States Circuit Court of Appeals for the Sixth Circuit the following items designated as contents of record on appeal:

1. Indictment filed and entered on Journal June 12, 1944.
2. Defendant arraigned, Plea of Not Guilty entered, bond continued, entered June 19, 1944, Freed, J.
3. Plea of Not Guilty withdrawn by leave of Court, Motion to Quash of defendant taken under advisement, entered December 7, 1944, Freed, J.
4. Motion to Quash of defendant filed December 7, 1944.
5. Order overruling Motion to Quash Indictment of defendant, Plea of Not Guilty entered December 8, 1944, Freed, J.
6. Jury impaneled and sworn; trial begun; Motion to Dismiss of defendant, Motion for Directed Verdict of defendant; motions overruled, adjourned until 11:00 o'clock Monday morning, entered December 8, 1944, Freed, J.
7. Motion to Dismiss filed December 8, 1944.
8. Motion for Directed Verdict filed December 8, 1944.
9. Trial resumed, Renewal of Motion to Dismiss overruled; Renewal of Motion for Directed Verdict and Judgment of Acquittal, overruled; trial concluded; Verdict of Guilty as charged, imposition of sentence suspended until Dec. 15, 1944, bond fixed in the sum of $5,000.00 entered December 11, 1944, Freed, J.
10. Verdict filed December 11, 1944.
11. Renewal of Motion to Dismiss filed December 11, 1944.
12. Renewal of Motion for Directed Verdict and Judgment of Acquittal filed December 11, 1944.
13. Order sentencing defendant to 5 years and $37.95 costs filed and entered December 15, 1944, Freed, J.
14. Notice of Appeal filed in duplicate December 15, 1944.
15. Order directing appellant to lodge Bill of Exceptions on or before January 13, 1945, and settling and filing of same not later than January 27, 1945, filed January 4, 1945.

16. Stipulation and Order extending time to lodge Bill of Exceptions to March 14, 1945, and for settling and fixing same to March 28, 1945, filed January 10, 1945, Freed, J.
17. Assignment of Errors.
18. This Designation of Contents of Record on Appeal.
19. Bill of Exceptions with Order settling same.
20. Photostatic Copies of all of Government's Exhibits:
    - No. 1, Selective Service Questionnaire of George William Dodez.
    - No. 2, Conscientious Objector's Form of George William Dodez.
    - No. 3, Order to Report for Work of National Importance.
21. Photostatic Copies of following from Selective Service File of Defendant, Designated Defendant's Exhibit "A":
    - Registration Card, June 30, 1942.
    - Certificate of Duly Ordained Minister.
    - Ordination Card.
    - Affidavit of R. A. Smith, August 11, 1942.
    - Affidavit of George H. Goulin, August 12, 1942.
    - Affidavit of George William Dodez, August 12, 1942.
    - Affidavit of Andrew Gerber, August 15, 1942.
    - Letter of Hayden C. Covington to Director of Selective Service, Sept. 8, 1942.
    - Application of Watchtower Bible and Tract Society, Inc. to Director of Selective Service to include Dodez on certified list, Sept. 7, 1942.
    - Letter of George William Dodez to Local Board, Nov. 27, 1942.
    - Letter of John J. Nolan to Local Board, Nov. 30, 1942.
    - Letter of John J. Nolan to Dodez, Dec. 2, 1942.
    - Letter of Dodez to Local Board, Dec. 3, 1942.
    - Statement of Ministry by 44 signators, Dec. 5, 1942.
    - Letter of Local Board Chairman to Dodez, refusing hearing, Dec. 8, 1942.
    - Notice of Appeal of Dodez, December 14, 1942.
    - Notice of Appointment of Dodez as Presiding Minister of Wooster Congregation, January 21, 1943.
    - Letter and Notice to Local Board of Appointment as Presiding Minister, March 16, 1943.
    - Photograph of Exterior of Church Building, "King-

dom Hall" of Wooster Congregation.
Photograph of Interior of Kingdom Hall with George William Dodez presiding.
Affidavit of 66 members of Wooster Congregation of Ministerial Status of George William Dodez.
Minister's License of Dodez issued by State of Ohio.
Letter of Dodez to Local Board requesting reopening of case, Jan. 15, 1944.
Letter of Dodez to Appeal Agent, June 16, 1943.
Order to Report Preinduction Physical Examination, Feb. 10, 1944.
Letter of Local Board to District Attorney, Feb. 22, 1944.
Certificate of Fitness accepting Dodez for general military service, Feb. 21, 1944.
Report of Physical Examination and Induction, Sections 1 and 2, Feb. 21, 1944.
Letter of George William Dodez of April 19, 1944, to Local Board.
Letter of Dodez to Local Board, May 15, 1944.
Residue of Selective Service File Photostatic Copies also to be transmitted to Circuit Court of Appeals for the convenience of the Court, but such residue composed of much miscellaneous and material immaterial is not designated as a part of this record on appeal.
(All photostatic copies of exhibits furnished and transmitted to Circuit Court of Appeals by Appellant).

22. Any other Motions, Orders or Documents subsequently filed but not specified herein but proper on appeal.
23. Certificate of Clerk.

VICTOR F. SCHMIDT,
8469 Pine Road,
Rossmoyne, Ohio,
Attorney for Defendant-Appellant.

Receipt and service of copy hereof acknowledged March 26, 1945.

(S) DON C. MILLER,
United States Attorney.

EXHIBITS

(Immaterial portions of formal filled-in documents and sections thereof not applicable omitted in printing. Handwritten or typewritten material is distinguished from the wording of the printed forms by *italics*.)

SELECTIVE SERVICE QUESTIONNAIRE
(Government's Exhibit 1)

Order No. *11,643* Date of Mailing *Sept. 16, 1942*
Local Board No. 2 Name *George William Dodez*
Wayne County
Sept. 16, 1942 Address *Apple Creek*
243 W. Market St.
Orrville, Ohio *Apple Creek, Wayne Ohio*

This questionnaire must be returned on or before *Sept. 21, 1942.*

E. L. Cain, Member of Local Board

Series I.—IDENTIFICATION

1. My Name is *George William Dodez*
2. In addition to the name given above, I have also been known by the name of *NONE.*
3. My residence now is RD # 2, *Orrville, Wayne, Ohio.*
4. My telephone number now is *NONE.*
5. My Social Security number is *NONE.*
6. I was *20* years of age on my last birthday.

Series II.—PHYSICAL CONDITION (Confidential)

1. To the best of my knowledge, I *have no* physical or mental defects or diseases.
2. I *am not* an inmate of an institution.

Series III.—EDUCATION

1. I have completed *8* years of elementary school and *4* years of high school.
2. I have had the following other than elementary and high school:
   Watchtower Bible and Tract Society, Incorporated Bible Since Jan., 1941.
3. I *can* read and write the English language.

Series IV.—PRESENT OCCUPATION OR ACTIVITY

1. I am now *X* working at the job described under No. 2 below.
2. (a) The job I am now working at is (give full title, for example: Construction draftsman, turret-lathe op-

erator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage-license clerk, etc.):

Ordained Minister of the Gospel

(b) I do the following kind of work in my present job (be specific—give brief statement of your duties): *Perform missionary and evangelistic service in organizing and establishing churches and generally preaching the Gospel of the Kingdom of God in definitely assigned territory.*

(c) I have had *1¾* years experience in this kind of work.

(d) My average *annual* earnings in my present job are *nothing.*

(e) In my present job, I am:

(Put an X in one box) X an independent worker, working on my own account, not hired by anyone, and not hiring any help.

(f) I *am not* now employed in national defense work.

(h) Other business or work in which I am now engaged is *NONE.*

Series VI.—OCCUPATIONAL EXPERIENCE, QUALIFICATIONS, AND REFERENCES

1. I have also worked at the following occupations other than my present job, during the past 5 years:

		From	To—
Farmer	*General farm work*	*1938*	*1942*

2. My usual occupation, or the occupation for which I am best fitted, is *Ordained Minister of the Gospel.*
3. I *am not* licensed in a trade or profession.
5. I prefer the following kind of work *Ordained Minister Work.*

I *would* consider accepting a job which would require me to move away from my present home.

Series VII.—FAMILY STATUS AND DEPENDENTS

1. I am *X* married; I *do* live with my wife; we were married at *Catlettsburg, Kentucky,* on *Nov. 15th, 1941.*
2. (a) I have *none* children under 18 years of age.
   (b) Of these children, *none* live with me in my home.
3. (a) The following is a list of all the members of the family group in which I live (list yourself first):

No Dependents—wife working

Series VIII.—MINISTER, OR STUDENT PREPARING FOR THE MINISTRY

1. (a) I *am* a minister of religion. (b) I *do* customarily serve as a minister.
   (c) I have been a minister of the *Watchtower Bible and Tract Society* since *Jan., 1941.*
   (d) I *have* been formally ordained.

Series IX.—CITIZENSHIP

1. I was born at *Apple Creek, Ohio, United States of America.*
2. I was born on *September 9th, 1922.*
3. My race is *X* White.
4. I *am a* citizen of the United States.

Series X.—CONSCIENTIOUS OBJECTION TO WAR

By reason of religious training and belief I am conscientiously opposed to war in any form and for this reason request that the local board furnish me a Special Form for Conscientious Objector (Form 47) which I am to complete and return to the local board.

GEORGE DODEZ

Series XI.—COURT RECORD

1. I *have not* been convicted of a crime, other than minor traffic violations.

REGISTRANT'S STATEMENT REGARDING CLASSIFICATION

In view of the facts set forth in this Questionnaire it is my opinion that my classification should be *4D.*
Application has been made to add my name to list of certified Pioneers filed by society with National Hdqrs. Selective Service 9/8/42. Either classify me in class 4-D or suspend action until National Headquarters rules on such application.

REGISTRANT'S AFFIDAVIT

State of Ohio, County of Wayne, SS:

I, *George William Dodez*, do solemnly affirm that I am the registrant named and described in the foregoing statements in this Questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing in my own handwriting.

GEORGE WILLIAM DODEZ

Affirmed and sworn to before me this *21st* day of *September, 1942.*

WILLIS HOWE
Notary Public

MINUTE OF ACTION BY LOCAL BOARD No. *2*,
COUNTY OF *WAYNE*, STATE OF *OHIO*

The local board classifies the registrant in Class *I*, Subdivision *A*, by the following vote: Yes *4*, No. *0*.

10/26/42. *Clayton E. Welty,*
Member.

(Attached to same page as above Minute by Local Board the following memorandum slip:)

See if in AII or III
GEORGE DODEZ
Apple Creek
Selling Jehovah
Witness Literature
at Public Square.

APPEAL TO BOARD OF APPEAL

I hereby appeal to the board of appeal from the determination of the local board.

12/17/42. *George William Dodez* *Registrant.*

MINUTE OF ACTION BY BOARD OF APPEAL No. *9*,
COUNTY ———, STATE *OHIO*

The board of appeal classifies the registrant in Class *4*, Subdivision *E*, by the following vote: Yes *5*, No *0*.

6/4/43 *JAMES A. ROGERS,*
Member.

(Attached to same page as above Minute of Board of Appeal the following typewritten memorandum:)

MINUTE OF ACTION BY BOARD OF APPEAL

The Board of Appeal reviewed this file and determined that the registrant should not be classified in Class IV-H, Class IV-F, Class IV-D, Class IV-C, Class IV-B, Class IV-A, Class III-C, Class III-B, Class III-A, Class II-C, Class II-B or Class II-A and directed that the file be forwarded to the United States Attorney at Cleveland for investigation and report on the claim of the registrant as a conscientious objector, by the following votes ayes 4, nays 0.

Arthur Haupt,
Member.

MINUTES OF OTHER ACTION

11/25/42 *1-A Reaf P. P. 5 ayes 0 noes. Not an ordained minister as per public recognitio.*
12/7/42 *Hearing and case reconsidered with registrant reaffirmed 1-A—4 ayes 0 noes*
7/20/43 *Failed to Report for Final Type Phy. Exam.*
2/21/44 *Appeared for Pre-Ind. Exam. 4/8/44 Sent Not. for Work of Nat'l Imp.*
2/28/44 *218 to Reg. 4/21/44 Failed for 4/21/44 to Rep. of Work of Nat'l Imp.*
11/30/42—Form 57 sent to Reg. Class 1-A
12/8/42 *Form 57 sent to Reg. Class 1-A*
6/11/43 *Form 57 sent to Reg. Class 4E—Appeal*
6/26/43 *201 - Blood*
12/18/44 *Reclass 4-F (moral) Sentenced to 5 years in violation of Selective Service Act as of 12-15-44.*
1/24/45 *57 to Reg.*

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR
(Government's Exhibit 2)

Order No. 11,643

Local Board No. 2
Wayne County

Sept. 21, 1942

Name *George William Dodez*

Address *Apple Creek* (County)
Wayne, Ohio.

243 W. Market St.
Orrville, Ohio

This form must be returned on or before *Sept. 26, 1942.*

Series I.—CLAIM FOR EXEMPTION

B. I claim exemption by the Selective Training and Service Act of 1940 for conscientious objectors, because I am conscientiously opposed by reason of my religious training and belief to participation to war in any form and to participation in any service which is under the direction of military authorities.

GEORGE WILLIAM DODEZ

Series II.—RELIGIOUS TRAINING AND BELIEFS

1. Describe the nature of your belief which is the basis of your claim made in Series I above.

(Portion of handwriting covered up by inserted typewritten material on flap, which photostat does not reveal but continues as follows:)

helps put out by Jehovah God's visible organization on the earth the "Watchtower Bible and Tract Society." I have been associated with the Watchtower Bible and Tract Society Inc. since January, 1941.

(On typewritten insert appears the following:)

Today all nations are involved in a war for world domination in which both sides are fighting against Christ's Kingdom, neither side is under the protection of Jehovah God. Therefore if one is going to be a Christian he must not take part in the affairs of this world because the world is against Christ's Kingdom. (James 4:4).

John 15:19 "If ye were of the world, the world would love his own; but because ye are not of the world, but I have chosen you out of the world, therefore the world hateth you."

Rec'd Sept. 26, 1942.

3. Give the name and present address of the individual upon whom you rely most for religious guidance.

Watchtower Bible and Tract Society, 117 Adams Street, Brooklyn, New York.

4. Under what circumstances, if any, do you believe in the use of force?

Use force in the fight for righteousness. "Nevertheless we, according to his promise, look for new heavens and a new earth, wherein dwelleth righteousness." (2 Peter 3:13) Our fight is for the New World and not for this wicked Old World.

5. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

My fight is for the New World and I don't use instruments of destruction but use the Sword of the Spirit (the Bible) and go from door to door. Ask anyone in or about Apple Creek, O. Jehovah God will do the destroying at Armageddon, for he says "Vengeance is mine." Read the following insert from Deuteronomy 32:35-39.

Deuteronomy 32:35-39

To me belongeth vengeance, and recompence; their foot shall slide in due time: for the day of their calamity is at hand, and the things that shall come upon them make haste.

For the LORD shall judge his people, and repent himself for his servants, when he seeth that their power is gone, and there is none shut up, or left.

And he shall say, Where are their gods, their rock in whom they trusted,

Which did eat the fat of their sacrifices, and drank the wine of their drink offerings? Let them rise up and help you, and be your protection.

See, now that I, even I, am he, and there is no god with me: I kill, and I make alive; I wound, and I heal; neither is there any that can deliver out of my hand.

6. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

I give public expression for my claim made in Series I above by witnessing at every opportunity from house to house and on the street and elsewhere. I did so since January, 1941, over most of Wayne County, part of Holmes County and other scattered spots.

Series III—GENERAL BACKGROUND

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (public, private, church, military, commercial, etc.).

(Name of School)	(Type of School)	(Location of School)
East Union Rural High School	*Public*	*Apple Creek, Ohio*

(Dates Attended)
(From— To—)
1928 *1940*

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged:

(Type of work)	(Name of Employer)
Farm	*R. R. Dodez (my father)*

(Address of Employer)	(Period worked) (From—	To—)
Apple Creek, Ohio	*Unknown*	*1942*

3. Give all addresses and dates of residence where you have formerly lived:

(Name of City, town or Village)	(State or Foreign Country)	
Apple Creek	*Ohio*	
(Street Address or R. F. D. Route)	(Dates of Residence) (From—	To—)
123 W. Main St.	*1922*	*1937*
R. F. D.	*1937*	*1942*

4. Give the name, address, and country of birth of your parents and indicate whether they are living or not.
Mr. and Mrs. R. R. Dodez, Apple Creek, Ohio. Born in U. S. A: Both living.

Series IV.—PARTICIPATION IN ORGANIZATIONS

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.
No.
2. Are you a member of a religious sect or organization?
Yes.
If your answer to question 2 is yes, answer questions (a) through (e).
(a) State the name of the sect, and the name and location of its governing body or head if known to you:
Watchtower Bible and Tract Society, 117 Adams St., Brooklyn, New York.
(b) When, where, and how did you become a member of said sect or organization?
The same way the Apostles of Christ got into Christ's church.
(c) State the name and location of the church, congregation, or meeting where you customarily attend:
No name. We meet at Apple Creek, Ohio.
(d) Give the name and present address of the pastor or leader of such church, congregation, or meeting:
No pastor or leader. Company servant—Andrew Gerber, R. D. Dalton, Ohio.
(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war:
No creed or official statements—each person must make

his own choice and take his own stand for the New World.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than religious or military: *None.*

Series V.—REFERENCES

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war:

(Name)	(Full Address)	(Occupation or Position)	(Relationship to you)
Ralph Smith	*Bowman Street, Wooster, Ohio*	*Works at Auto Store, Wooster*	*None*
Andrew Gerber	*R. D. Dalton, Ohio*	*Painter*	*None*
Glen Rider	*Apple Creek, Ohio*	*Butcher*	*None*
Merlin Hartzler	*R. D. Dalton, Ohio*	*Ordained Minister*	*None*

REGISTRANT'S AFFIDAVIT

STATE OF *Ohio*, COUNTY OF *Wayne*, ss:

I, *George William Dodez*, do solemnly swear (or affirm) that I am the registrant described in the foregoing questions and answers, that I know the contents of my said answers, and that each and every statement of fact in my answers to said questions is true, to the best of my knowledge and belief.

(Registrant sign here) *George William Dodez*

Subscribed and sworn to (or affirmed) before me this *26th* day of *September, 1942.*

J. A. Moser, Notary Public

My commission expires May 1, 1943.

J. A. Moser
(Signature of officer administering oath)

Notary Public (Designation of officer)

ORDER TO REPORT FOR WORK OF NATIONAL IMPORTANCE

Government's Exhibit No. 3

Local Board No. 2
Wayne County
April 8, 1944
243 W. Market St.
Orrville, Ohio

April 8, 1944
(Date of mailing)

THE PRESIDENT OF THE UNITED STATES,

To *George* *William* *Dodez*
(First Name) (Middle Name) (Last Name)
Home address *R. D. # 2, Orrville, Ohio*
Order No. *11643*

GREETING:

Having submitted yourself to a local board composed of your neighbors and having been classified under the provision of the Selective Training and Service Act of 1940, as amended, as a conscientious objector to both combatant and noncombatant military service (Class IV-E), you have been assigned to work of national importance under civilian direction. You have been assigned to the *CPS Camp No. 28*, located at *Medaryville, Indiana*, in the State of *Indiana*.

The Selective Service System will furnish you transportation to the camp, provided you first go to your local board named above and obtain the proper instructions and papers.

You will, therefore, report to the local board named above at *5:00 A. M.* on the *21st* (*Slow time—Orrville Time*)
(Time)
day of *April, 1944*.

You will be examined at the camp for communicable diseases, and you will then be instructed as to your duties.

Willful failure to report promptly to this local board at the house and on the day named in this notice is a violation of the Selective Training and Service Act of 1940, as amended, and may subject you to a fine and imprisonment.

You must keep this form and take it with you when you report to your local board.

Ross S. Weygandt
Member of Local Board (*R*)

(In this case the defendant's exhibits are presented under the general offer of Exhibit "A," but in order to differentiate and specifically designate to the court the various parts thereof the exhibits are listed as A (1), A (2), etc.)

Registration Card, June 30, 1942.

Defendant's Exhibit A (1)

(Serial Number) *N 165*

1. Name (print) *George William Dodez* (Order Number) *11,643*
2. Place of Residence (print) *R. D. # 2, Orrville, Wayne (county, Ohio c/o Allen Brenneman*
   (The place of residence given on the line above will determine local board jurisdiction; Line 2 of registration certificate will be identical)
3. Mailing Address: *Apple Creek, Wayne County, Ohio*
4. Telephone: *Apple Creek 12-R-3*
5. Age in years: *19* 6. Place of Birth: *Apple Creek, Ohio*
   Date of Birth: *September 9, 1922*
7. Name and Address of Person who will always know your address:
   Mrs. Lucille Dodez—Orrville, R. D. #2, Ohio.
8. Employer's Name and Address: *Unemployed—Ordained Minister—Jehovah's Witnesses.*
9. Place of Employment or Business: *Territory—Near Wooster—Wayne County, Ohio.*

I affirm that I have verified above answers and that they are true. *S/ George William Dodez*

(Registrant's Signature)

Registrar's Report

Description of Registrant

(RACE) White *X* (HEIGHT Approx.) *5-11* (WEIGHT Approx.) *165*

(COMPLEXION) Light *X* (EYES) *Brown X* (HAIR) Brown *X*

Other obvious physical characteristics that will aid in identification: *Scar on left cheek and over left ear.*

I certify that my answers are true; that the person registered has read or has had read to him his own answers; that I have witnesses to his signature or mark and that all of his answers of which I have knowledge are true, except

as follows:

S/ Ada E. Baab
(Signature of Registrar)
Registrar for Local Board *2 Wayne (county) Ohio*
Date of registration *June 30, 1942*
Selective Service Board No. 2
Wayne County, Orrville, Ohio

CERTIFICATE OF DULY ORDAINED MINISTER
Defendant's Exhibit A (2)

Offices:
Administration
124 Columbia Heights
Publishing
117 Adams Street

Phone
Triangle 5-1474
Cable
Watchtower
Brooklyn

WATCHTOWER
Bible and Tract Society
Incorporated
"This Kingdom Gospel Must Be Preached"
Publishing—117 Adams Street—Brooklyn, N. Y.

September 7, 1942

TO WHOM IT MAY CONCERN:

This is to certify that *George William Dodez, one of* Jehovah's Witnesses, has been associated with the Watchtower Bible and Tract Society, Inc., according to our records, since *January, 1941.*

He was baptized in *June, 1942,* and was appointed direct representative of this organization to perform missionary and evangelistic service in organizing and establishing churches and generally preaching the Gospel of the Kingdom of God in definitely assigned territory on *May 7, 1942.*

Mr. *George W. Dodez's* entire time is devoted to missionary work. He has declared himself to be a follower of Christ Jesus and wholly consecrated to do the will of Almighty God. He has taken a course of study in the Bible and Bible helps prescribed by this Society and has shown himself apt to preach and teach "this Gospel of the Kingdom."—Matthew 24:14.

He has the Scriptural ordination to preach "this Gospel of the Kingdom." (Isaiah 61:1, 2; Isaiah 52:7) He is therefore, declared by this Society a duly ordained minister

of the Gospel and is authorized to represent this Society and preach "this Gospel of the Kingdom," proclaiming the name of Jehovah God and Christ Jesus, His king.

Watchtower B. & T. Society, Inc.

T. J. Sullivan
(Superintendent of Evangelists)

Subscribed and sworn to before me
this *7th* day of *Sept., 1942.*

William K. Jackson
Notary Public

Notary Public, Kings County
Kings Co. Clks. No. 73. Reg. No. 3005
Commission expires March 30, 1943

Ordination Card
Defendant's Exhibit A (3)

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT *Geo. Dodez*, whose signature appears below, is an ordained minister of Jehovah God to preach the Gospel of God's Kingdom under Christ Jesus and that said person is one of Jehovah's witnesses. The Watch Tower Bible and Tract Society, created and organized and chartered by law to preach the gospel of God's Kingdom, sends forth Jehovah's witnesses to do this work as commanded by the Almighty God. Jehovah's witnesses are ordained and commissioned by God, and the signer of this card Scripturally claims such ordination and commission, as set forth in the Bible at Isaiah 61:1-2; Isaiah 43:9-12; Matthew 10:7-12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; 1 Corinthians 9:16. Being one of Jehovah's witnesses, the signer must obey God rather than men. (Acts 3:23; Acts 4:19; Acts 5:29) Jehovah's witnesses, in obedience to God's commandments, preach the gospel and worship Almighty God by calling upon people at their homes, exhibiting to them the message of the gospel of said Kingdom in printed form. Bibles, books, booklets, and magazines are offered free to those that are poor, or on contribution, which contribution is accepted for the publishing of other literature so that the Word of the Lord may have greater circulation in all this world for a witness, giving other people the opportunity of learning of God's

gracious provision for them. Said witness of Jehovah is doing this work of his own volition and is bearing the testimony before the people in accordance with the provisions of the fundamental laws of this land and in obedience to God's commandment, which is supreme. Any kindness shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46). The Society or its appointed representatives will be pleased to furnish authoritative proof as to whether the signer of this card is one of Jehovah's witnesses.

WATCH TOWER BIBLE AND TRACT SOCIETY
By N. H. KNOOR, *President.*

Name *Geo. Dodez*

Address *Apple Creek*

Ohio

Affidavit of R. A. Smith
Defendant's Exhibit A (4)

State of Ohio
Wayne County
S S: Affidavit

I hereby make it known that I regard George William Dodez as a full time regularly ordained minister of Jehovah's witnesses. He not only puts in full time in the field but takes active part at all regular meetings. He also conducts Bible studies at the homes of interested persons.

In view of his activities and faithfulness to Jehovah I consider that he is entitled to be classified as a full minister of religion.

(S) *R. A. Smith*

Sworn to before me and subscribed in my presence by the said R. A. Smith at Wooster, Ohio, this 11 day of August, 1942.

(S) *Dan S. Yoder*
Dan S. Yoder, Notary Public
My commission expires
Oct. 16, 1943

Affidavit of George H. Goulin
Defendant's Exhibit A (5)

To Whom It May Concern:

I hereby wish to certify that I have known George William Dodez for the past two years, that he is an ordained minister of religion and has been for two years, and that since May 6, 1942 he has devoted all his time each day, and many evenings each week to the preaching of the Gospel, conducting Bible studies, and that he is at present magazine servant of Wooster, Ohio, company of Jehovah's witnesses.

George William Dodez has symbolized his consecration by water immersion on July 26, 1942, that all the above information is statement in fact and to the best of my ability as stated.

(S) *George H. Goulin*
George H. Goulin
R. D. #2
Wooster, Ohio

Subscribed and sworn to before me, a Notary Public, this *12th* day of August, 1942, County of Wayne, City of Wooster, Ohio.

(S) *O. M. Yocum*
Signature of Notary
My commission expires
November 27, 1944

Affidavit of George William Dodez
Defendant's Exhibit A (6)

Local Board No. 2
Wayne County, Ohio
Orrville, Ohio.

IN RE: George William Dodez.
Applecreek, Ohio.
Registrant.
Order No. ———.

AFFIDAVIT

State of Ohio, Wayne County, ss.
Before me a Notary Public in and for the county and state aforesaid personally appeared GEORGE WILLIAM

DODEZ, of the Village of Applecreek, Ohio, who being by me first duly affirmed deposes and says:

That he was registered in accordance with the Selective Service Proclamation of the President of the United States, by Ada E. Baals, Registrar for Local Board No. 2, Wayne County, Ohio, on the 30th day of June A. D. 1942. That there has been issued to him a registration certificate, (Form D. S. S. Form 2.) and now has said registration certificate now in his possession.

That my full name as registered with the Local Board No. 2 of Wayne County, Ohio, is George William Dodez. Up to and to date (Aug. 11, 1942) I have not received a Selective Service Order Number, neither have I been classified.

My present address is: Applecreek, Ohio, General Delivery. The number and address of the local selective service board with whom I am registered is: Local Board of Wayne County, Ohio, No. 2, Orrville, Ohio.

I have been a member of the religious sect known as Jehovah's Witnesses, the 15th day of July A. D. 1941.

I have not held any position in company organizations by appointment of society or sect known as Jehovah's Witnesses. I am now and have been a Pioneer in the service since the 6th day of May A. D. 1942 and previous to that date served as a publisher.

That the circumstances, reasons and desires which resulted in my becoming a Pioneer, instead of remaining a publisher or company worker, are hereto attached, made a part hereof, and marked Exhibit A.

The pioneer work occupies the greater amount of my time. I live with my wife in the home of her parents. The only secular work that I perform is to help my father and father-in-law occasionally. I do not depend on this secular work as the means of my livelihood.

The duties that I perform as a pioneer is to go from house to house and preach the gospel of the Kingdom and declare the day of vengeance of Jehovah, to comfort all that mourn, place literature and assist interested parties in gaining knowledge of the truth.

A pioneer is required to devote One hundred and fifty, or more, hours per month in this work.

I am an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and do so preach and conduct ceremonies by going to the homes of

the people. We do not have specially built church edifices, other than the homes of the people, where services are arranged and the public are invited.

I have been commissioned by The Watch Tower Bible and Tract Society, created and organized and chartered by law to preach the gospel of God's kingdom. A copy of the certificate of my ordination is made a part of this affidavit and hereto attach Marked Exhibit B.

Further deponent sayeth not.

George William Dodez

Acknowledged, affirmed to and signed by GEORGE WILLIAM DODEZ, before me this 12th day of August A. D. 1942.

Willis Horn
Willis Horn, Notary Public.
Commission expires: October 16th, 1944.

EXHIBIT A.

When I was a company publisher I put in only 12 to 15 hours a month. After gaining a better knowledge of the truth and learning more about Jehovah's purposes I took the step of consecration. In this, one agrees to do God's will and not the will of man. The commandment that Christ Jesus told his disciples and the commandment for all other Christians is to go among the people and "preach saying The Kingdom of Heaven is at Hand" (Matthew 10:7)

At Matthew 24 it tells how the faithful followers of Christ will be hated and other things proving that Christ has come and the end of the world is here. It also states at Matthew 24:14 "and this gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come.

This message and warning of destruction of the world must be given before the great battle of Armageddon takes place. All persons of good will must learn of God's purposes if they are to be carried thru this great time of trouble. The religious clergymen have failed to tell the people of this destruction; therefore Jehovah calls forth his witnesses, (Isaiah 43:10, 12) to warn the people.

To-day all nations are involved in a war for world domination in which both sides are fighting against Christ's Kingdom, neither side is under the protection of Jehovah

God. Therefore if one is going to be a christian he must not take part in the affairs of this world because the world is against Christ's Kingdom. (James 4:4) Every business in the world is putting forth every effort for the war and if I were to take part in helping make war equipment I would be helping to kill a brother in another country. The only choice is to devote all my time to the Lord and fight for his kingdom, and this I do by witnessing throughout the land, using the sword of the spirit and not instruments of destruction.

The commandments that the Lord gives: "Do not Kill" (James 2:11) "Thou Shall not Kill" (Exodus 20:13.). Vengeance is the Lord's and He will do the Killing at Armageddon.

Affidavit of Andrew Gerber
Defendant's Exhibit A (7)

State of Ohio, Wayne County, ss.

Before me a Notary Public in and for the county and state aforesaid, personally appeared ANDREW GERBER of the Villagg of Dalton, Ohio R. D. and personally known by me to be the person he represents himself to be and who being by me first duly sworn deposes and says:

That he is a Company Servant and one of Jehovah's Witnesses.

That he has personal knowledge that GEORGE WILLIAM DODEZ of Applecreek, Ohio, is one of Jehovah's Witnesses.

That the records of the Wooster (Ohio) Company of Jehovah's Witnesses show that said GEORGE WILLIAM DODEZ has been actively engaged in the work of preaching the gospel of God's kingdom since July 15th, 1941.

That my association with him convinces me that he is very conscientious in this work and is diligent in obeying God's commandment as a pioneer or minister of Jehovah's Witnesses. Further deponent sayeth not.

Andrew Gerber

Affirmed and subscribed before me this 15 day of August A. D. 1942.

Willis S. Horn
Notary Public.

Letter of Hayden C. Covington
Defendant's Exhibit A (8)

Law Offices of
Hayden Covington
Brooklyn
117 Adams Street
New York

Sept. 8, 1942

The Director of Selective Service
21st Street and C. Street NW.,
Washington, D. C.

Dear Sir:

Re: George William Dodez, Local Board 2,
West Market, Orrville, Ohio.
June registrant.

Pursuant to arrangements heretofore made between your Headquarters and the undersigned, there is attached hereto application of the Watchtower Bible and Tract Society, together with necessary affidavits, to have the above named registrant added to the list of Members of the Bethel Family and Pioneers of Jehovah's witnesses as approved by and on file with National Headquarters of Selective Service System.

Yours sincerely,
H. C. Covington
General Counsel for
Jehovah's witnesses.

Application of Watchtower Bible and Tract Society, Inc.
Defendant's Exhibit A (9)

WATCHTOWER
BIBLE AND TRACT SOCIETY
INCORPORATED
PUBLISHING • 117 ADAMS STREET • BROOKLYN,
NEW YORK

September 7th, 1942

Director of Selective Service,
21st Street and C Street, N. W.,
Washington, D. C.

Dear Sir:

Application is hereby made to add to the list of pioneers certified to State Headquarters of Selective Service the

name of George William Dodez, whose affidavit is attached hereto, indicating that his Selective Service Order number is * 9-9-22, and that he is registered with Wayne county Local Board No. 2, located at West Market, Orrville, Ohio. Additionally attached hereto are affidavits submitted by him from friends and associates with respect to his pioneer status. *Date of birth

George William Dodez has been associated with this Society, according to our records, since January, 1941. He was baptized in June, 1942, and was appointed direct representative of this organization to perform missionary and evangelistic service in organizing and establishing churches and generally preaching the Gospel of the Kingdom of God in definitely assigned territory, after making full examination into his background and qualifications, on May 7, 1942.

Mr. Dodez' entire time is devoted to missionary work. He has declared himself to be a follower of Christ Jesus and wholly consecrated to do the will of Almighty God. He has taken a course of study in the Bible and Bible helps prescribed by this Society and has shown himself apt to preach and teach "This Gospel of the Kingdom."—Matthew 24:14.

He has the Scriptural ordination to preach "this Gospel of the Kingdom." (Isaiah 61:1, 2; Isaiah 52:7) He is therefore, declared by this Society a duly ordained minister of the Gospel and is authorized to represent this Society and preach "This Gospel of the Kingdom," proclaiming the name of Jehovah God and Christ Jesus, His King.

WATCHTOWER B. & T. SOCIETY, INC.

Subscribed and sworn to before me
this 7th day of Sept., 1942.

T. J. Sullivan
Superintendent of Evangelists

William K. Jackson

Letter of George William Dodez to Local Board
Defendant's Exhibit A (10)

November 27, 1942
Apple Creek, Ohio

Members of the Draft Board
c/o Local Draft Board No. 2
Wayne County, Orrville, Ohio

Gentlemen:

I learned by a recent letter from the Law Offices of H. C.

Covington, 117 Adams Street, Brooklyn, N. Y. information which I would like to call to your attention. National Headquarters has just revised its policy with respect to addition of names to the certified official list and there will be no more names added but otherwise Opinion 14 will remain the same; namely, those possessing the usual qualifications and holding credentials from the Watchtower Bible & Tract Society proving their FULL TIME PIONEER SERVICE status (such as ordination certificate which I filed with my questionnaire) will be given the same consideration as ministers of "other religious organizations'" and the fact that the name of a FULL TIME MINISTER of Jehovah's Witnesses does not appear on the certified list will not be grounds for denying class IV-D. The files of these pioneers not acted on (added or rejected of which mine is included) will be forwarded from Washington to State Directors for transmittal to Local Boards with appropriate instructions.

I was advised to inform you of this change and send a copy of this letter to the State Director to confirm the new policy of National Headquarters to the Local Board so that I can be provided with the proper classification of IV-D.

Yours very respectfully,

George Wililam Dodez
Columbus, Ohio

CC State Director of Selective Service

Letter of John J. Nolan to Local Board
Defendant's Exhibit A (11)

November 30, 1942

Wayne County Board No. 2
243 West Market Street,
Orrville, Ohio

Subject: George William Dodez

Gentlemen:

Attached is correspondence received from National Headquarters concerning George William Dodez, a registrant under your jurisdiction who claims to be eligible for Class IV-D by reason of being a member of the sect known as Jehovah's Witnesses.

This registrant's name is not on the official list certified to National Headquarters for Selective Service by the

Watchtower Bible and Tract Society, Inc., and therefore, there is no prima facie evidence that the registrant qualifies for Class IV-D. It is up to the registrant to produce clear and convincing proof that he is entitled to a ministerial status.

FOR THE DIRECTOR:
(S) John J. Nolan
Captain, Q. M. C.
Manpower Division

Letter of John J. Nolan to Dodez
Defendant's Exhibit A (12)

December 2, 1942

George William Dodez
Apple Creek, Ohio
Dear Sir:

Receipt is acknowledged of the copy of letter dated November 27, 1942, which you directed to your local board.

Under former Regulations, the fact that a registrant's name was on the Official List of Ministers certified to National Headquarters for Selective Service by the Watch Tower Bible and Tract Society, Incorporated, was prima facie evidence that he was entitled to be placed in Class IV-D. Since no more names will be added to the Official List, it is now up to each registrant to establish by clear and convincing proof that he is a minister of religion as defined in Selective Service Regulations, before he may be considered for Class IV-D.

For the Director:
John J. Nolan
Captain, Q. M. C.
Manpower Division
cc to Local Board 2 Wayne County

Letter of Dodez to Local Board
Defendant's Exhibit A (13)

Apple Creek, Ohio
December 3, 1942

Members of the Local Draft Board
c/o Local Draft Board #2
Wayne County, Orrville, Ohio
Gentlemen:

I received my classification of 1-A dated November 30,

1942 and as stated in the Notice of Right to Appeal it states, "Before appeal, a registrant may file a written request for appearance within the same ten-day period; and, if he does so, the Local Board will fix a day and notify him to appear personally before the local board."
I would like to have a hearing before the local board for reclassification.

Very truly yours,
(S) George William Dodez

Statement of Ministry by 44 Signators
Defendant's Exhibit A (14)

December 5, 1942

TO WHOM IT MAY CONCERN:

We, the undersigned, wish to state that we recognize George William Dodez as a minister of Jehovah's Witnesses (pioneer) and that he preaches and teaches the principles of The Watchtower Bible & Tract Society, Inc.

NAME	ADDRESS
R. R. Dodez	Apple Creek, Ohio
Mrs. Robert Dodez	Apple Creek, Ohio
A. J. Brenneman	Orrville, Ohio
Mrs. A. J. Brenneman	Orrville, Ohio
Mabel Saurer	Wooster, Ohio
Rae Anderson	Wooster, Ohio
Georgia Hindman	Wooster, Ohio
R. A. Smith	Wooster, Ohio
Mrs. R. A. Smith	Wooster, Ohio
Mrs. Nola Wirth	Wooster, Ohio
John Wirth	Wooster, Ohio
Nellie Wirth	Wooster, Ohio
Golda Eason	Wooster, Ohio
Mrs. George Dodez	R. #2 Orrville, Ohio
F. E. Billheimer	West Salem, Ohio
Mrs. Francis Billheimer	West Salem, Ohio
Merlin Hartzler	Dalton, Ohio
Ida Hofstetler	Dalton, Ohio
Mary Gerber	Dalton, Ohio
Birdene Hofstetler	Dalton, Ohio
Nona Gerber	Dalton, Ohio
Virginia Miller	Wooster, Ohio, R.D.4
Geo. H. Goulin	Wooster, Ohio
Mrs. Geo. H. Goulin	Wooster, Ohio

Gracie Miller	Wooster, Ohio
Leroy J. Hofstetler	Dalton, Ohio
Andrew Gerber	RFD #2, Dalton, Ohio
Florence Newcomer	RD #1 Creston, Ohio
Ruth Bucher	RD #1 Shreve, Ohio
George L. Newcomer	RD #1 Creston, Ohio
Blanche Long	W. Henry St., Wooster, O.
Lester Wirth	Wooster, Ohio
Roy Fetter	Orrville, Ohio
May Fetter	Orrville, Ohio
Joseph G. Lippy	Barberton, Ohio
Velma Giffin	241 N. Second, Barberton, O.
R. A. Markey	241 N. Second, Barberton, O.
Bruce Giffin	241 N. Second, Barberton, O.
Jerry Kennell	RD #1 Barberton, Ohio
Jackie Kennell	241 N. Second, Barberton, O.
Florence Mackey	241 N. Second, Barberton, O.
Cy King	1166 South Ave., Barberton, O.
Weldon L. Mackey	592 E. Ford Ave., Barberton, O.
Earl C. Proehl	669 Way St., Barberton, O.

Letter of Local Board Chairman to Dodez
Defendant's Exhibit A (15)

December 8, 1942

George W. Dodez
R. F. D.
Apple Creek, Ohio

Dear Sir:

After checking up with various members of the local board regarding a personal appearance rehearing of your case for Monday, December 14th, I find that a majority of the members are opposed to such a rehearing.

I might mention, Mr. Dodez, that I have changed my opinion from what I told you over the phone Tuesday noon. I can see no justification for a further hearing. As explained to you our State Headquarters has asked that we limit all registrants to one personal appearance hearing and after deliberating over your request, I can see no reason for making an exception in your case.

You, of course, have a right to appeal the findings of the local board and such an appeal must be filed within ten days from the date given on your classification card.

Yours very truly,

LOCAL BOARD #2 FOR WAYNE COUNTY
Ross S. Weygandt, *Chairman*

Notice of Appeal of Dodez
Defendant's Exhibit A (16)

Apple Creek, Ohio
Dec. 14, 1942

Members of Local Draft Board
c/o Local Draft Board #2
243 W. Market St.
Wayne County, Orrville, Ohio

NOTICE OF APPEAL OF
GEORGE WILLIAM DODEZ
ORDER NO. 11643

Gentlemen:

December 7, 1942 was the date set for a personal hearing before my board.

When I attempted to present the matter before the board I was interrupted and the following notations were made at that time: Any schooling? Which I stated was elementary school and four years of high school and have studied the Watchtower Society publications since 1939 in preparation for the ministry. I was asked as to whether I attended a theological school. The notation was made by Mr. Wayne Hart that I did not attend any theological school. Also Mr. Hart made a notation upon asking me concerning my ordination that I was ordained on September 7, 1942. When I informed the board that I have been a minister and a regular pioneer since May 7, 1942, as the photostatic copy of my ordination paper will show which is on file, Mr. Hart made notation, "From May 7, 1942 on he put in a lot of time studying the Watchtower literature."

My hearing was abruptly brought to an end by Mr. Hart in a statement that he had other registrants to consider and no further attention was given to me, although it was my desire and purpose to explain the matter concerning my ministry from material which was already in my file. I was absolutely prevented from having a full hearing.

I tried to have a rehearing subsequent to this time and contacted four of the members of the board for a rehearing. Three of the members informed me that a rehearing would be satisfactory to them, and thereafter Ross S. Weygandt, Chairman of the Board, informed me that he had changed his decision in the matter and that such rehearing

would not be granted.

I wish to appeal my classification of 1-A to that of IV-D as a regular and duly ordained minister of religion and request that the proper classification of IV-D be given me. The reasons that I am requesting the classification of IV-D are as follows:

(a) All the facts in my file and case show that I have been a regular minister of religion since May 7, 1942, prior to my registration of June 30, 1942. As a pioneer I must put in at least 150 hours, which is, admittedly, much more time than the average minister puts in his actual practice. Your attention is kindly invited to the opinion of General Lewis B. Hershey of June 12, 1941 that pioneers and others of Jehovah's Witnesses who are putting in a substantial part of their time in the work of ministering should receive consideration and be put in class IV-D, the same as any other minister of religion. While it is true that National Headquarters is no longer placing any additional names on the certified list as ministers, yet that fact does not prevent ministers from being classified when we consider that such certification of ministers from other religious organizations is not necessary. The Watchtower Bible & Tract Society, of which I function as a pioneer and minister of religion, is duly recognized by the Selective Service System as a religious organization and its ministers are also recognized by the Selective Service System.

(b) My second reason for asking that I be put in Class IV-D is that the Local Board was highly prejudiced, unfair and capricious in placing me in Class 1-A, when in truth and in fact I am a minister of religion. Ross S. Weygandt, Chairman of the Local Board, informed me that they had already put three of Jehovah's Witnesses back of the bars and if we, Jehovah's Witnesses, did not like it in this country we could get out.

In as much as there is great prejudice in my case on the part of the Local Board toward Jehovah's Witnesses equal justice and fairness has not been shown me.

I, therefore, kindly request that the appeal shown reclassify me as a minister of religion and place me in Class IV-D.

Very sincerely,

(S) George William Dodez

Notice of Appointment as Presiding Minister
Defendant's Exhibit A (17)

January 21, 1943

COMPANY OF JEHOVAH'S WITNESSES
AT WOOSTER STATE OHIO

Dear Brethren:

The following brethren are appointed to serve your company in the positions indicated. They are obligated before the Lord to discharge their assigned duties faithfully, to always work for the peace and unity of the Lord's organization and co-operate fully with the other servants and brethren in the company, which burden, we feel confident, they will be glad to accept from the Lord through His organization.

Company Servant: George W. Dodez, Rte. 2, Orville, Ohio.

Assistant company servant: Ralph A. Smith, 238 E. Bowman St., Wooster, Ohio.

Back-call servant: George Goulin.

Account servant: John Wirth.

Stock servant: Andrew Gerber

Territory servant: Merlin Hartzler

Advertising servant: George W. Dodez

Study Conductors

Watchtower: Ralph A. Smith.

Book: George Dodez; R. A. Smith

Public Model:

Your brethren and fighters for the New World,

Watchtower Bible & Tract Society.

Letter and Notice to Local Board of Appointment Defendant's Exhibit A (18)

Apple Creek, Ohio
March 16, 1943

Members of the Draft Board
% Local Draft Board No. 2
Wayne County, Orrville, Ohio

Gentlemen:

On my classification card at the bottom it states: The Law requires you - To keep in touch with your local board. To notify it of any fact which might change classification, to notify it of any change of address. This letter is written in regard to the second - To notify it of any fact which might change classification.

On January 21, 1943 I received the appointment as company servant of the Wooster, Ohio, company of Jehovah's Witnesses. This appointment as company servant is in addition to being a full-time pioneer devoting at least 5 hours a day in publicly preaching this Gospel of the Kingdom from house to house and place to place.

This appointment was not by the local company but was direct from the Watchtower Bible and Tract Society, Inc., 117 Adams St., Brooklyn, New York.

As Company Servant I am at the head of the entire Wooster Company, that is head of a congregation. It is the duty of the Company Servant to keep all others in the company informed regarding instructions as to how to carry on the witness work and to preside over all Company meetings of which there are three each week, Sunday evening 8:00-9:00, Watchtower study, Wednesday evening 8:00-9:00 Service meeting and Friday evening 8:00-9:00 Book study.

I would appreciate very much if you would give this matter careful consideration and reconsider my classification of 1-A.

Thank you.

Sincerely yours

(S) George W. Dodez

Order No. 11,643

Affidavit of 66 members of Wooster Congregation
Defendant's Exhibit A (21)

TO WHOM IT MAY CONCERN:

We, the undersigned, hereby assert that we are members of the Church of Wooster Company of Jehovah's Witnesses; that George William Dodez has been and is our pastor and minister since January 21, 1943, and that he regularly and customarily serves and performs the duties of the regular and duly ordained minister f our congregation. In this capacity he teaches and preaches the doctrines of the beliefs of Jehovah's Witnesses; that he is authorized to perform marriage, baptismal, funeral and other services generally done by duly ordained ministers.

We recognize the said George William Dodez as our presiding pastor and minister and his being taken away from his congregation will work a great and inconvenient hardship.

The photographs appearing on the following two pages are respectively: the reproduction of the outside and interior views of our church building in which our minister, George William Dodez, presides.

John Wirth	Wooster, Ohio
Andrew Gerber	Dalton, Ohio
Roy Fetter	Orrville, Ohio
G. L. Newcomer	Creston, Ohio
Geo. Goulin	RD #2 Wooster, O.
Abraham Hofstetter	Dalton, Ohio
Robert Hofstetter	Dalton, Ohio
John Edge	Creston, RD # 1
May Fetter	Orrville, Ohio
Florence Newcomer	Creston, Ohio
Ida Hofstetter	Dalton, Ohio
Nellie Wirth	Wooster, Ohio
Mrs. Jennie Goulin	Wooster, Ohio
Barbara Hofstetter	Dalton, Ohio
Dorothy Smith	Wooster, Ohio
Phoebe Smith	Wooster, Ohio
Johnny Fetter	Orrville, Ohio
Lester Gerber	Dalton, Ohio
Leroy Hofstetter	Dalton, Ohio
Eleanor Newcomer	Creston, Ohio
Billy Newcomer	Creston, Ohio
Nona Gerber	Dalton, Ohio

Birdene Hofstetter	Orrville, Ohio
Mildred Heyser	Smithville, Ohio
Alice Gerber	Dalton, Ohio
Sarah Wirth	Wooster, Ohio
Grace Miller	Wooster, Ohio
Irma Maser	Dalton, Ohio
Bertha Bixler	Applecreek, Ohio
R. A. Smith	Wooster, Ohio
Lillie Snyder	Wooster, Ohio
Golda Eason	Wooster, Ohio
Mary Gerber	Dalton, Ohio
Blanche Brenneman	Orrville, Ohio
Mabel Saurer	Wooster, Ohio
Mildred Graverean	Wooster, Ohio
Lloyd Gerber	Dalton, Ohio
Allen Smith	Wooster, Ohio
Junior Gerber	Dalton, Ohio
Mrs. R. A. Smith	Wooster, Ohio
Sarah Smith	Wooster, Ohio
Georgia Hindman	Wooster, Ohio
Virginia Walters	Wooster, Ohio
Rae Anderson	Wooster, Ohio
Willie E. Boyes	Wooster Ohio
Lowell Dean Boyes	Wooster, Ohio
Billy Ray Boyes	Wooster, Ohio
Edward J. Boyes	Wooster, Ohio
Susie Boyes	Wooster, Ohio
Jemie B. Thompson	Wooster, Ohio
Lucille Dodez	Orrville, Ohio
Erma Dodez	Apple Creek, Ohio
Doris Dodez	Apple Creek, Ohio
Virginia Miller	Wooster, Ohio
Earl Miller	Wooster, Ohio
Marian J. Dilyard	Shreve, Ohio, RR #1
Mrs. M. J. Dilyard	Shreve, Ohio, RR #1
Donna Dilyard	Shreve, Ohio, RR #1
A. J. Brenneman	Orrville, Ohio
Maria Billheimer	West Salem, Ohio
Francis Billheimer	West Salem, Ohio
Donald Billheimer	West Salem, Ohio
Emily McKee	Wooster, Ohio
Allen Moser	Dalton, Ohio
Blanche Long	Wooster, Ohio
Aurelia Bates	Apple Creek, Ohio

AFFIDAVIT

State of Ohio
County of Wayne, ss:

John Wirth being duly sworn says that he is one of the signators to the above statement relative to George William Dodez, that he has read the statement at the head of the list of signators and the photographs of the church building and he knows the same to be true.

Sworn and Subscribed before me
this *8th* day of *November*, 1943.

(S) *O. M. YOCUM*
Notary Public
My commission expires Nov. 17, 1944.

Minister's License
Defendant's Exhibit A (22)

MINISTER'S LICENSE

General Code, Sec. 11183,4,5

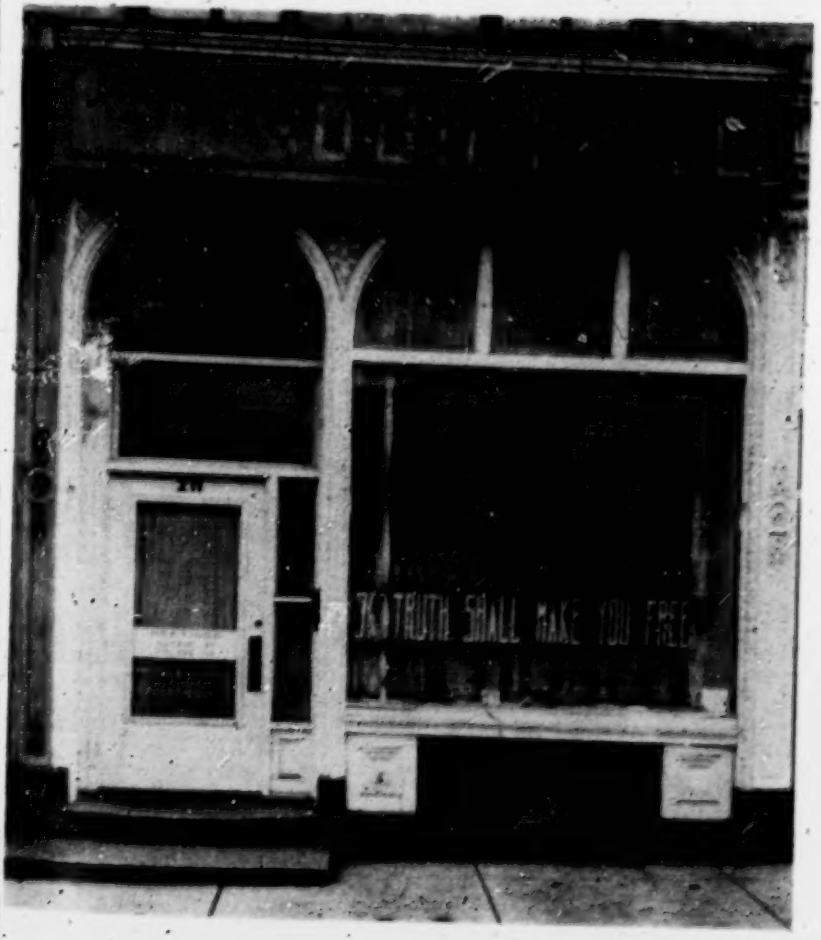
THE STATE OF OHIO
Wayne County, ss.

PROBATE COURT
May 18 A. D. 1943.

BE IT REMEMBERED, That on the Eighteenth day of May, 1943, the Reverend George William Dodez, a Minister of the Gospel, officiating in Wayne County, Ohio, having produced to the Judge of the Probate Court of said Wayne County, Credentials of his being a Regularly Ordained Minister, of the Jehovah's Witnesses Religious Society or Congregation; it is therefore ordered by the Court that a License be issued to the said George William Dodez, who is hereby Authorized to Solemnize Marriages, within this State, so long as he shall continue a regular Minister in such Society or Congregation.

In Testimony Whereof, I, the undersigned, Judge of the Probate Court of said County, have hereunto set my hand and affixed the seal of said Court, at Wooster, Ohio, this 18th day of May, 1943.

(S) U. S. SAUNDERS
Probate Judge


THE TRUTH SHALL MAKE YOU FREE

MORE THAN CONQUERORS
THROUGH HIM THAT LOVED US ROM 8:37

Letter Requesting Reopening of Case
Defendant's Exhibit A (23)

Route 2
Orrville, Ohio
January 15, 1944

Members of Local Draft Board
%Local Draft Board #2
243 W. Market St.
Wayne County, Orrville, Ohio

Gentlemen:

I have here enclosed additional evidence proving my status as an Ordained Minister. This material, with what is already in my file, should be enough proof to you that I am entitled to a 4-D classification and I am now asking you to reopen my draft case and consider the evidence proving that I am a regular and duly ordained minister of religion.

As has been brought to the attention of everyone by courts throughout the land, individuals connected with deciding classifications concerning Jehovah's Witnesses and others must put aside all prejudice and personal favoritism and treat all alike whether they be Catholic, Protestant, Jew or Jehovah's Witnesses.

Because I am a minister of Jehovah's Witnesses does not prohibit you from classifying me as ministers of other religions are classified. Jehovah's Witnesses ARE a recognized religious organization as stated in the draft laws and it is up to the draft board to recognize them as ministers and classify them as such.

You have a responsible position before the United States Government and all people living in the United States of America to help uphold the Constitution and the freedoms which this country is fighting for. If you take away the rights of a minority group, as Jehovah's Witnesses, then you might as well take away the rights of all people living in the United States, as Hitler did in Germany.

The additional evidence which I am now presenting has been called to your attention before when I personally talked to each of you, except Dr. Adair. The evidence is as follows:

1. A Minister's License which was issued by Probate Judge of Wayne County, U. S. Saunders, gives me the authorization to solemnize marriages within the State of Ohio.

2. A newspaper clipping concerning the last marriage I performed.

3. A statement containing the signatures of the congregation of the Church over which I preside; pictures of the exterior and interior of our Church Building; and was notarized by a registered Notary Public.

Thanking you for your kind consideration of this matter, I remain

Sincerely,

(S) George William Dodez
Minister of Jehovah's Witnesses

NEW YEAR'S DAY MARRIAGE

New Year's Day at the home of Mr. and Mrs. A. J. Brenneman of East Union, Miss Helen Piggot and Lewis A. May, both of Massillon, were united in marriage by George Dodez, minister of Jehovah's witnesses. Attendants were the bride's brother, A. H. Piggot, and the bridegroom's sister, Miss Dorothy May. The bride wore light blue and a corsage of flowers.

Following the ceremony a reception was held at the home of Mr. and Mrs. A. H. Piggot of Massillon. The couple are on a trip, after which they will make their home in Massillon. Guests were from Wooster, Dayton, Massillon, and Akron.

Letter of Dodez to Appeal Agent
Defendant's Exhibit A (24)

Route 2
Orrville, Ohio
June 16, 1943

Appeal Agent, Edwin S. Wertz
Local Board #2
Wayne County
243 W. Market St.
Orrville, Ohio

Dear Sir:

I, the undersigned, George William Dodez, Order No. 11643, under Local Board #2, for Wayne County, 243 W. Market Street, Orrville, Ohio, say that at all times since my registration on June 30, 1942, I have been a regular

and duly ordained minister of religion, have been putting in my full time in such work and am recognized by the Watchtower Bible & Tract Society as such, being a pioneer. I have exhausted my rights of appeal, but on account of prejudice desire and ask that my case be reopened for the consideration of my file and any further evidence that the Local Board and the Appeal Board may desire. The Local Board and the Appeal Board have continued my classification in 4-E and have refused to grant me the 4-D classification as a minister due to the fact that my name has not been certified at the National Headquarters of the Selective Service System, when that requirement has never been in order at any time under the Selective Service System. The mere fact that other ministers of the different denominations have been granted a 4-D classification and the same is refused me is discrimination. The Supreme Court of the United States on May 3, 1943, stated emphatically that the work and the ministers of Jehovah's Witnesses are entitled to the same high esteem and protection as that of any other minister.

Having made covenant to do the will of the Almighty God, and find..g that His will is that I should spend my time in preaching the Gospel, I cannot engage in any other occupation and be true to my God. There is a difference between those that are called to serve the Lord and those who are not so called. I must serve the Lord and cannot willingly disobey my covenant obligations. In 1 Corinthians 7:22-24 it is specifically written: "For he that is called in the Lord, being a servant, is the Lord's freeman: likewise also he that is called, being free, is Christ's servant. Ye are bought with a price; be not ye the servants of men. Brethren, let every man, wherein he is called, therein abide with God."

Now if I am called to perform military or civilian duty I must refuse, because under penalty of everlasting destruction I must not willfully disobey Almighty God. If I am called to military or civilian duty and declining such, I must face a long term of imprisonment, and this would take me out of my regular service as a minister of Jehovah God. I can take no other course and be true to my covenant.

I, therefore, appeal to you that in order to avoid a great hardship and injustice that you use your benificent and kind influence to have my case reopened and reconsidered that I might be placed in Class 4-D as a minister of the Gospel.

Thanking you for your kind consideration of this matter, I am

Very sincerely,

(S) George William Dodez
Route 2
Orrville, Ohio

Copies sent to:
General Lewis B. Hershey, National Headquarters, Washington, D. C.
State Director, Selective Service, Columbus, Ohio.

Order to Report Preinduction Physical Examination
Defendant's Exhibit A (25)

Selective Service System
Order to Report
Preinduction Physical Examination
Feb. 10, '44
(date of mailing)

THE PRESIDENT OF THE UNITED STATES,

To *George* *William* *Dodez* *11,643*
(First Name) (Middle Name) (Last Name) (Order No.)

GREETING:

You are hereby directed to report for preinduction physical examination at 243 W. Market St., Orrville, Ohio, at 6:15 A. M. on the 21 of February 1944.
(day) (Month)

(S) Ross S. Weygandt
(Member or Clerk of Local Board)

IMPORTANT NOTICE TO REGISTRANT

Registrant who believes he has a disqualifying defect.—If you believe that you have some defect which will disqualify you for service you may, on or before the 16 day of February, 1944, appear in person at the office of the Local Board, or, if you are unable by reason of such defect to personally appear, you may submit an affidavit from a reputable physician or an official statement by an authorized representative of a Federal or State agency to the effect that such physician has personal professional knowl-

edge or such authorized representative has official knowledge of your defect, the character thereof, and that you are unable to personally appear due to the character of the defect. The Local Board may send you to the Local Board examining physician, and, if it does so, it shall be your duty to appear at the time and place designated by the Local Board and to submit to such examination as the examining physician shall direct. If the Local Board determines that your defect does disqualify you for service you will receive a Notice of Classification (Form 57) advising you that you have been placed in Class IV-F. Unless prior to the date fixed for your preinduction physical examination, you receive such a Notice of Classification (Form 57) advising you that you have been placed in Class IV-F, you must report for your preinduction physical examination as directed.

Every registrant.—When you report for preinduction physical examination you will be forwarded to an induction station where you will be given a complete physical examination to determine whether you are physically fit for service. If you sign a Request for Immediate Induction (Form 219), and you are found qualified for service, you will be inducted immediately following the completion of your preinduction physical examination. Otherwise, upon completion of your preinduction physical examination, you will be returned to this Local Board. You will be furnished transportation and meals and lodgings when necessary. Following your preinduction physical examination you will receive a certificate issued by the commanding officer of the induction station showing your physical fitness for service or lack thereof.

If you fail to report for preinduction physical examination as directed, you will be delinquent and will be immediately ordered to report for induction into the armed forces. You will also be subject to fine and imprisonment under the provisions of Section 11 of the Selective Training and Service Act of 1940, as amended.

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this order and go immediately to that Local Board and make written request for transfer for preinduction physical examination.

DSS Form 215.

Letter of Local Board to District Attorney
Defendant's Exhibit A (26)

22 February 1944

District Attorney's Office
Federal Building
Cleveland, Ohio
Att: Frank E. Steel

In Re: Geo. William Dodez
Order No. 11643

Dear Sir:

The local board wishes to inform you of the fact that the above registrant reported for Pre-Induction Examination of February 21, 1944. To date the board has received no information from the Examining Station stating whether or not Mr. Dodez was accepted for Work of National Importance. The Board will notify you immediately when this information is received.

We are enclosing copies of letters written by the registrant and Mr. Weygandt, chairman of the local board.

Yours very truly,

LOCAL BOARD NO. 2,
WAYNE CO.
Chairman, Local Board

Enc. 2

Certificate of Fitness
Defendant's Exhibit A (27)

Selective Service System
ORIGINAL
Feb. 28, '44

CERTIFICATE OF FITNESS

George	William	Dodez	11643
(First name)	(Middle name)	(Last name)	(Order No.)

Having been forwarded for preinduction physical examination and having been examined, I hereby certify that you have been found:

1. X Physically fit, acceptable by Army for general military service.

2. . Physically fit, acceptable by Army for limited military service. IV-E.
3. . Physically fit, acceptable by Navy, including Marine Corps, Coast Guard.
4. . Rejected, physically unfit.
5. . Rejected, physically fit but unacceptable for other reasons.

Feb. 21, 1944
(Date of examination)

Name Harry I. King
Induction Station Commander
Rank .....
Station Captain, FA,
Cleveland, Ohio

DSS Form 218

Report of Physical Examination
February 21, 1944
Defendant's Exhibit A (28)

Section I—GENERAL (Local Board will prepare from latest information available.)

1. Name *DODEZ George William*
2. Present address *R. D. #2 Orrville Wayne (County) O.*
3. Registrant's Order No. *11,643*
4. Social Security No. *None*
5. Marital status: (Married) *X*
6. Number of Group 4 children *None*
7. Birthplace of registrant (*month*) *9* (*day*) *9* (*year*) *22*
8. Birthplace of registrant *Apple Creek, Ohio, USA*
9. Race: (White) *X* 10. Citizenship: (a) United States citizen: (Yes) *X*
11. Court record: (a) Convicted of a crime other than minor traffic violation. (No) *X* (c) Now on parole, conditional release, probation, or suspended sentence: (No) *X*
12. United States military service: (a) previous service: (None) *X*
13. Education: (Number of years completed) Elementary school *8* High School *4*
14. Occupation and industry: (a) Title and duties of present job *Ordained Minister of the Gospel of Jehovah Witness. Minister of the Watchtower Bible and Tract Society*
(b) Length of experience: Years *3* Month *1*

(c) Business of present employer *Watchtower Bible and Tract Society*

15. Employment class (present job): (Independent worker) *X*

16. Number of times previously sent to Induction Station

Section II.—LOCAL BOARD EXAMINATION AND CLASSIFICATION

20. (c) This local board has classified the above-named registrant in Class *4-E*

(d) Signature of member of local board *E. L. Cain* ....*E. L. Cain (R)*

(e) Place (*Orville, Ohio* .....(f) *Date 6/4/43*

Letter of George William Dodez
April 19, 1944
Defendant's Exhibit A (29)

Route 2
Orrville, Ohio
April 19, 1944

Members of the Draft Board
% Local Draft Board No. 2
243 West Market Street
Wayne County
Orrville, Ohio

Reply to: Order to Report for Work of National Importance Date April 8, 1944

Gentlemen:

I am sorry to disappoint you but as I have told you before I will now tell you again: I am a regular and duly ordained minister of a recognized religious organization and as such am exempt from military training or work of national importance under the Selective Service System. That I cannot and have no intention of giving up my present occupation of preaching "This Gospel of the Kingdom" as such is in full harmony with the laws of the United States of America and more particularly is commanded to be done as a Supreme Law set forth by "The giver of all good and perfect gifts", Jehovah God.

Letters, affidavits, pictures, etc., have been presented to you during the past twenty months proving my status as an ordained minister. A few of these facts are as follows:

First: A letter of ordination issued by the Watchtower

Bible and Tract Society, Inc., which is evidence enough of my being a full time, regular and duly ordained minister of a recognized religious organization.

Second: Letter of December 2, 1942, from Selective Service, Ohio State Headquarters, Columbus, Ohio, telling of the discontinuance of the Official Certified List of Jehovah's Witnesses and that it is now up to each registrant to establish by clear and convincing proof that he is a minister of religion as defined in Selective Service Regulations, before he may be considered for Class IV-D.

Third: My letter to you concerning the appointment I received on January 21, 1943, as Company Servant of the Wooster, Ohio, Church of Jehovah's Witnesses which was in addition to my being a full time minister (pioneer).

Fourth: My letter to you dated January 15, 1944 concerning additional evidence proving my status as an Ordained Minister which additional evidence was as follows: 1. A Minister's license which was issued by Probate Judge of Wayne County, U. S. Saunders, giving me authorization to solemnize marriages within the State of Ohio. 2. A newspaper clipping concerning the last marriage I performed. 3. A statement containing the signatures of the congregation of the Church over which I preside; pictures of the exterior and interior of our Church Building; and was notarized by a registered Notary Public.

Having made a covenant to do the will of the Almighty God, and finding that His will is that I should spend my time in preaching the Gospel, I cannot engage in any other occupation and be true to my God. There is a difference between those that are called to serve the Lord and those who are not so called. I must serve the Lord and cannot willingly disobey my covenant obligations.

A Free Educator of Men of Good Will

(S) George William Dodez

Order No. 11643

Ordained Minister of Jehovah's Witnesses

Selective Service

Ohio State Headquarters, Columbus, Ohio

Director of Selective Service

21st Street and C Street, NW, Washington, D. C.

CERTIFICATE OF CLERK

Northern District of Ohio,

Eastern Division, ss:

I, C. B. Watkins, Clerk of the United States District Court within and for said district, hereby certify that the foregoing typewritten pages contain a full, true and complete copy of the record and all proceedings and pleadings in this cause in accordance with the designation of contents of record on appeal, the original pleadings remain in my custody as clerk of said court.

There is also transmitted and certified herewith the original bill of exceptions, and one additional copy thereof, in accordance with Rule IX of the Supreme Court of the United States with reference to practice and procedure with respect to proceedings in criminal cases after verdict.

In Testimony Whereof, I have hereunto signed my name and affixed the seal of said court at Cleveland, in said district this 31st day of March, 1945, and in the one hundred and sixty-ninth year of the Independence of the United States of America.

C. B. WATKINS, *Clerk.*

(S) K. V. WILSON, *Chief Deputy.*

SEAL

PROCEEDINGS IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

JUDGMENT

(Entered March 18, 1946)

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

On Consideration Whereof, It is now here ordered, and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed March 18, 1946)

Before Hicks, and Simons, Circuit Judges, and Picard, District Judge.

Picard, District Judge. Appellant, member of Jehovah's Witnesses, was convicted by a jury in the District Court for the Northern District of Ohio, for violation of the Selective Training and Service Act of 1940, as amended, and regulations pursuant thereto. He failed to report for work of national importance and was sentenced to five years' imprisonment.

The issues are three, though under numerous headings, and cover questions that have heretofore been settled by our courts in many instances since administrators of the Act and members of this particular religious sect have clashed during the past five years in prolific litigation.

Appellant first claims—that the Selective Training and Service Act, as amended, and regulations adopted, constitute a Bill of Attainder or ex post facto law contrary to Clause 3, Section 9, Article I and the Sixth Amendment to the United States Constitution.

Our answer is in the negative.

In *Cummings* v. *The State of Missouri* (4 Wall.), 71 U. S. 277, a Bill of Attainder is defined at page 323 as

> "a legislative act which inflicts punishment without a judicial trial."

The Act and regulations, as they affect the status of an unwilling draftee who has become a member of the armed forces, do not by that test constitute a Bill of Attainder. The Act does not impose punishment without a judicial trial, even under decisions of our several courts, before *Estep* v. *The United States of America* and *Smith* v. *The United States of America* were decided by our Supreme Court February 4, 1946, and which we will hereinafter discuss. As pointed out in

> *Billings* v. *Truesdell*, 321 United States 542;
> *Smith* v. *United States*, 148 Fed. (2d) 288;
> *Gibson* v. *United States*, 149 Fed. (2) 751;
> *United States* v. *Estep*, 150 Fed. (2d) 768;
> *United States ex rel. Hull* v. *Stalter*, 151 Fed. (2d) 633,

the writ of habeas corpus is available to protect rights of the individual after his induction into the service. The Constitution does not guarantee one the right to select his own tribunal or his own method of procedure. *Emmons* v. *Smitt et al.*, 58 Fed. Supp. 869.

The recent case of *United States* v. *Gosciniak*, 142 Fed. (2d) 240, likewise dealt with this phase of the Selective

Training and Service Act, and other citations holding the Act constitutional are:

United States v. *Herling*, 120 Fed. (2d) 236; and
United States v. *Lambert*, 123 Fed. (2d) 395.

Defendant's second contention, that he had exhausted his administrative remedies so as to permit a judicial review of his classification as a defense to the indictment, calls for extended remarks in view of the recent opinions of the Supreme Court in *Estep* v. *United States* and *Smith* v. *United States* (supra).

Up to those decisions there had been a practically unbroken line of authorities holding that the administrative remedies of a draftee did not terminate until after he had been inducted into the service when he must resort to habeas corpus in order to question his classification.

Sirski v. *United States*, 145 Fed. (2d) 749;
United States v. *Flakowicz*, 146 Fed. (2d) 874;
United States v. *Estep*, 150 Fed. (2d) 768;
Smith v. *United States*, 148 Fed. (2d) 288;
Koch v. *United States*, 150 Fed. (2d) 762;
Fletcher v. *United States*, 129 Fed. (2d) 262;
Klopp v. *United States*, 148 Fed. (2d) 659;
United States v. *Rinko*, 147 Fed. (2d) 1;
Gibson v. *United States*, 149 Fed. (2d) 751;
United States v. *Grieme*; *United States* v. *Sadlock*, 128 Fed. (2d) 811.

See, contra, *United States* v. *Peterson*, 53 Fed. Supp. 760.

The clarifying decision was that of *Falbo* v. *United States*, 320 United States 549, which did not involve the exact points of the *Estep* and *Smith* cases but which is on all fours with the case at bar. There Mr. Justice Douglas significantly and hitting the target squarely, on page 553 said:

"Completion of the functions of the local boards and appellate agencies; important as are these func-

tions, is not the end of the selective service process. The selectee may still be rejected at the induction center and the conscientious objector who is opposed to non-combatant duty may be rejected at the civilian public service camp. The connected series of steps into the national service which begins with registration with the local board does not end until the registrant is accepted by the army, navy, or civilian public service camp. Thus a board order to report is no more than a necessary intermediate step in a united and continuous process designed to raise an army speedily and efficiently."

But as it can be anticipated that many deductions not intended by the Supreme Court will be drawn from the recent *Estep* and *Smith* cases it is imperative to determine what legal changes, if any, have been made by these decisions, and analyzing them we conclude that the majority opinion holds:

First, that registrant's administrative remedies are exhausted only when he presents himself at the induction center;

Second, if indicted for refusal to be inducted he may urge in his defense, that the draft board

(a) had no jurisdiction; or

(b) was prejudiced against him because, for example, his race, politics, or religion; or

(c) failed to follow the machinery and procedure provided for in the draft act and regulations, such as not giving him a hearing or not permitting him to appeal; and

Third, that the courts may not set aside a classification honestly and fairly determined by the draft board no matter how "erroneous" that classification may be unless one of the above three defenses (a, b, or c) is clearly proven.

Let us check these conclusions.

Estep presented himself for induction but refused to be inducted and the record showed that he had been

denied his right to make an effective appeal to the President. Smith also reported (or was forced to report) at the induction station and also refused to be inducted. The trial court had not permitted him to present proof that the draft board classified him 1-A without foundation, discriminated against him, and denied him the right to prove that he was a minister.

It was on these grounds that the majority opinion in the *Estep* and *Smith* cases found reasons to reverse the Court of Appeals. (Justices Douglas, Black, and Reed.)

But it is well also to note the three concurring, and one dissenting, opinions.

Mr. Justice Murphy concurred in the result restating in effect his reasons given in the *Falbo* case (supra) in which he had dissented, and insisting in his present opinion that in these types of cases habeas corpus is a meaningless illusory remedy at best. He questioned that every defendant would receive a fair hearing through habeas corpus after draftee was once inducted into the service, while Mr. Justice Rutledge, concurring in the result reached by the majority, ridicules the thought of courts "marching up the hill in the criminal case, and down again in habeas corpus."

Mr. Justice Frankfurter (in Part I), after reciting cogent and compelling reasons why classifications by draft boards are "final," Section 10 (a) (2), 54 Stat. 885, 893; 50 U. S. C. App., p. 310 (a) (2), concurred in the majority opinion result in the *Estep* case because Estep had been denied his right to appeal and in the *Smith* case because of the confused theory upon which defendant had been tried in the district court.

The dissent by Mr. Justice Burton concurred in by Chief Justice Stone relies upon Part I of Mr. Justice Frankfurter's opinion and adheres to the rule that had been followed consistently by the several Circuit Courts of Appeals (Mr. Justice Frankfurter enumerates 40 Judges so holding from the first 8 circuits), to wit, that the registrant's remedy was habeas corpus and only after he has been actually inducted into the service.

So after reviewing *Estep* and *Smith* cases in detail and

noting that no attempt is made therein to reverse *Falbo* v. *United States* (supra), we conclude that the *Falbo* and not the *Estep* and *Smith* decision applies here. We believe the cases are identical since neither Falbo nor Dodez had exhausted his administrative remedies by reporting for induction. In the case at bar had draftee so reported and then refused to be inducted, the *Estep* and *Smith* decisions would have been controlling.

Defendant in his third claim insists that the draft board refused to grant him a fair hearing contrary to the due process provisions of the Fifth and Sixth Amendments to the Constitution of the United States and specifically contrary to provisions of the Selective Training and Service Act, as amended, and regulations. This point becomes important only if the *Estep* and *Smith* decisions can be interpreted as holding that such a defense may be raised at any point in draftee's journey and that it is not necessary for him to go through the formality of presenting himself at the induction center when he is going to refuse to be inducted after he gets there.

In approaching this question we believe it advisable to record chronologically the events leading up to draftee's present status as outlined in the main by his segregated testimony when he was given carte blanche to explain his position.

Defendant registered with the Selective Service System on June 30, 1942, asserting that he was an ordained minister of Jehovah's Witnesses at Wooster, Wayne County, Ohio.

September 21, 1942, filed his questionnaire with the local board and attached thereto notice that on September 8, 1942, application had been made to add his name to the list of certified pioneers filed by the Society for National Headquarters. He asked also that he be classified IV-D (Minister of Religion) or that action be suspended until National Headquarters had ruled on such application.

September 26, 1942, asked exemption as a conscientious objector (IV E) stating that he had been asso-

ciated with the Watchtower Bible and Tract Society since 1941, filing extracts from the Bible, verification of his claim by his superiors, and several affidavits.

November 30, 1942, local board classified registrant 1-A for unlimited military service.

December 3, 1942, wrote asking a "personal hearing" and related that when he called at the board office, December 7, 1942, he was asked some questions by Mr. Hart, the secretary. He was then told the board would look over all his material "later tonight" and would hear him "later on."

December 8, 1942, received another 1-A classification. He then made personal calls on individual board members, first contacting Mr. Cain who promised registrant another hearing and that he would "look over" registrant's file (R. 34).

Defendant then talked with board member Welty who also promised him a rehearing.

He then again visited Mr. Hart who had acted as secretary "the night of my hearing" (December 7) and

> "Mr. Hart's attitude had changed somewhat from his rush through attitude the night before at my hearing. It seemed as if he had lots of time now. After spending much time trying to explain to him that I was a minister and entitled to a IV-D classification, he insisted that one had to be a graduate from a Theological Seminary in order to be a minister and receive a IV-D classification" (R. 34).

Defendant then tried to see Mr. Weygandt, board chairman, who, over the telephone, promised him a personal hearing, but instead he received a letter from Mr. Weygandt, December 9, reading in part—

> "I can see no justification for a further hearing. As explained to you, our state headquarters has asked that we limit all registrants to one personal appearance hearing, and after deliberating over your request, I can see no reason for making an exception in your case.

"You, of course, have a right to appeal the findings of the local board, and such an appeal must be filed within 10 days from the date given on your classification card" (R. 36).

Registrant claimed that this letter was an admission by Mr. Weygandt

"that they were prejudiced in my case, and did not give me a fair hearing" (R. 37).

December 17, 1942, filed his application with the Board of Appeal.

January 21, 1943, was appointed a company servant and presiding minister of the Wooster, Ohio, Company of Jehovah's Witnesses and gave notice of this to the local draft board.

May 18, 1943, received a minister's license under the General Code of the State of Ohio.

June 11, 1943, six months after his 1-A classification, received a re-classification by the Appeal Board placing him in IV-E. He then wrote the government Appeal Agent asking him to use his influence to have his case reopened. (The IV-E classification is what appellant had asked for September 26, 1942, although he had also previously sought IV-D.)

Receiving his new classification he saw Mr. Wertz, the Appeal Agent, who told defendant he couldn't be classed as a minister because his name was not "on that certified list." Defendant concluded that Wertz was "highly prejudiced toward Jehovah's Witnesses" (R. 37).

Defendant later again asked for a hearing by the draft board but was told by one member (Cain) that he couldn't be classified IV-D because he was not on the "certified list."

He went to board member Arnold, who told him that the government and the board did not recognize Jehovah Witnesses "as ministers." Registrant concluded that Arnold was "very prejudiced to Jehovah Witnesses" (R. 39).

He then returned to Mr. Welty, and was told that the local board would reopen his case

"only if new and sufficient evidence is presented."

Although Mr. Welty went over his entire folder in his presence defendant concluded that Mr. Welty was "very prejudiced" (R. 40).

In December, 1943, defendant wrote the Appeal Board criticizing Mr. Weygandt for "his prejudice" but later saw Mr. Weygandt personally who talked with him for over an hour while defendant explained

> "Bible prophecy with present day events and he listened, although disagreeing on a few minor points" (R. 41).

Registrant admits that Mr. Weygandt said they would reopen his case or classify registrant as IV-D,

"if National Headquarters requested it"

but

> "Due to the fact that my name was not on the certified list, he would not reopen my case or give me IV-D" (R. 41).

As late as June, 1943, he was informed by Mr. Cain

"We talked this (his case) over the other night."

July 20, 1943, failed to report for final physical examination because his name was on appeal to National Headquarters.

November 8, 1943, filed more affidavits that he was a minister.

January 15, 1944, again asked to have his case reopened, sending the board what he claimed was additional evidence to show that he was a minister. This was refused.

February 28, 1944, received certificate of fitness.

March 17, 1944, asked permission to copy from his file a list of the letters contained therein and was refused.

April 18, 1944, sent notice to report for work "of national importance." For failure to comply with this order he was tried, convicted, and sentenced.

The record shows that defendant made little if any claim that he had not been given a hearing, fair or otherwise, in motions made prior to trial as counsel directed practically all attention to his theory that the draft law plus regulations, as interpreted by the courts, were in fact a Bill of Attainder. No stress was laid on the alleged prejudice of board members and no evidence of prejudice shown except defendant's questionable deductions.

In the 48 long instructions requested by defendant no claim is made that there had been no hearing and it can be noted that appellant through his counsel's brief, refers at times to the December 7 meeting as a "hearing" and at other times claims there had been "no hearing." The draft board consistently refers to appellant's demands as for a "further hearing" or "rehearing." It is only when the case reaches the Court of Appeals that stress is laid upon alleged failure to grant defendant "a hearing."

The record shows that from the time of defendant's registration to his final request for a re-hearing 18 months had elapsed during which period he was almost continually arguing his case to individual board members. Reading the record it is clear to this court that the board had concluded that any further appearances by defendant would be a useless waste of time for three reasons:

First, registrant was offering only cumulative, not new or additional evidence;

Second, he could not be legally classed as an ordained minister under established practice because he did not meet requirements of the regulations; and

Third, his application for reclassification had been granted by the appeal board changing him from 1-A to IV-E following which he had presented no new evidence but merely additional affidavits.

From the above record it also appears that the Dis-

trict Court was very careful in seeking to preserve defendant's rights by permitting him to make many statements in the presence of the jury that under the accepted interpretations of the overwhelming weight of authority up to that point could have been ruled out. Then too the court more than once excused the jury and permitted defendant to make his own record and to place therein practically anything he wanted. A perusal of those statements freely made by defendant through his counsel emphasizes the fact that this defendant had many hearings. It also is a fair conclusion that no hearing or hearings would ever be considered fair by him unless the board classified him as a minister, although at one point defendant admitted—following persistent questioning—that every one of the 102 members of his own congregation held the same ministerial card that he carried. True he tries to make capital out of remarks of some board members claiming that these denoted prejudice and bias. But there is no evidence that that bias or prejudice, if any, entered into the board's conclusion.

Under the *Estep* and *Smith* decisions including the concurring opinion of Mr. Justice Frankfurter and the dissenting opinion, it is held that on this matter the classification of the board was final. As Mr. Justice Douglas states:

> "The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous."

Defendant will undoubtedly claim that the decision in his case was not "in conformity with the regulations", since the chronological history herein given, particularly the remarks attributed to Mr. Hart, board secretary, at the December 7 meeting prove that the board thought that to be classified as a minister under the regulations one had to be graduated from a theological seminary. At this time, according to the record, National Headquarters had instructed all draft boards that when a member of Jehovah's Witnesses sought exemption as a minister and his name was not on the so-called "certi-

fied official list," his status "must be determined in each individual case by the local board" because

> "It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses."

Had draftee's name appeared on the official list he would have been classified as an ordained minister even by Mr. Hart. The record is clear that whether he had graduated from a theological seminary was not made the issue. His name not appearing on the certified list the board acted in a manner that it believed to be "in conformity with the regulations."

Affirmed.

DOCKET ENTRIES

1944

Dec. 19—Duplicate notice of appeal and clerk's statement of docket entries, filed (cause docketed December 28, 1944).

1945

Apr. 2—Certified typewritten transcript of record, in duplicate, filed.

Sept. 12—Twenty-four copies of printed record, filed.

Sept. 12—Proof of service of printed record, filed.

Sept. 12—Affidavit as to cost of printing, filed.

Oct. 18—Twenty copies of Brief for Appellant, filed.

Oct. 22—Proof of service of Brief for Appellant, filed.

Nov. 20—Stipulation extending time for filing brief of appellee to December 20th, filed (approved).

Dec. 5—Typewritten memo of add'l cases, filed.

Dec. 5—Cause argued and submitted (Before: Hicks, Simons and Picard, JJ.) 1-367

Dec. 20—Brief for appellee filed. 20 copies.

Dec. 26—Appearance of Counsel filed.

1946

Mar. 18—Judgment of District Court affirmed. I-399
Mar. 18—Opinion by Picard, J., filed.
Mar. 25—Motion of appellant to stay mandate, filed.
Mar. 25—Praecipe for certified record on petition for certiorari, filed.
Mar. 27—Certified transcript for certiorari application.

PRAECIPE FOR CERTIFIED TRANSCRIPT OF RECORD INCLUDING PROCEEDINGS OF THE UNITED STATES CIRCUIT COURT UPON PETITION FOR WRIT OF CERTIORARI

(Filed March 25, 1946)

To the Clerk of United States Circuit Court of Appeals for the Sixth Circuit:

Now comes George William Dodez, appellant, and shows that he purposes to file a petition for writ of certiorari with the Clerk of the Supreme Court of the United States and hereby requests the Clerk to prepare immediately and forward to the undersigned attorney of record for said George William Dodez the certified printed transcript of the record filed in the above entitled and numbered cause, together with a copy of all other proceedings in the said United States Circuit Court of Appeals, being more particularly designated as follows:

1. Printed transcript of the record filed in this cause.
2. Judgment of affirmance entered in this court on March 18, 1946.
3. Copy of opinion of this court dated March 18, 1946.
4. Copy of docket entries of this court showing the date of filing of all papers and proceedings had in this cause.
5. Copy of this praecipe for certified transcript of

record including proceedings of the United States Circuit Court of Appeals upon petition for writ of certiorari.

6. Copy of motion for stay of mandate.

7. Certificate of Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

WHEREFORE the Clerk is requested to immediately prepare the transcript of the record as above designated and forward the same to the designated undersigned attorney of record.

(s) VICTOR F. SCHMIDT,
Attorney for George William Dodez.
Post Office Address:
8469 Pine Road,
Rossmoyne, Ohio.

PROOF OF SERVICE BY MAIL

STATE OF OHIO, County of Hamilton, ss:

Affiant, undersigned, being sworn, says that he is attorney of record for appellant in the above entitled and numbered cause; that he served a copy of the within praecipe of certified transcript of record including proceedings of the United States Circuit Court of Appeals for the Sixth Circuit upon petition for writ of certiorari and also a copy of the motion for stay of mandate, securely enclosed in a sealed wrapper addressed to Don Miller, United States Attorney, Federal Building, Cleveland, Ohio, and in like manner to The Solicitor General of the United States of America, Department of Justice, Washington, D. C., postage prepaid on this 25th day of March, 1946.

(s) VICTOR F. SCHMIDT.

Sworn and subscribed before me this 25th day of March, 1946.

(SEAL.) (s) NOYCE S. ROBERTSON,
Deputy Clerk,
U.S.C.C.A., 6th Circuit.

MOTION FOR STAY OF MANDATE

(Filed March 25, 1946)

To the said Honorable Court:

Now comes George William Dodez, appellant herein, by and through his attorney Victor F. Schmidt, and moves the court for an order staying the return of the mandate to the District Court for the Northern District of Ohio, Eastern Division, until after the Supreme Court of the United States has entered a final order upon petition for writ of certiorari.

The main and precise issue in the instant case, as to when, where and how one charged with violation of the Selective Service and Training and Service Act of 1940, as amended, for refusal to report and submit for induction may challenge the legality of the orders of the administrative agency supporting the indictment, is now before the Supreme Court of the United States in the Case of Gibson v. United States, No. 221 October Term 1945 and that of Rea v. A. McDonald, Warden. Appellant would show that the questions presented in the appeal of the instant case to the Supreme Court of the United States are substantial. Indeed, the Supreme Court of the United States has indicated the substantiality of the questions presented in this appeal by granting petitions for certiorari in the Gibson and Rea cases, which raise the same questions as in the instant case.

Appellant herein would show that he is correct as to the law to be applied in this case, and that the court has erred, a grave injustice has been committed and a departure has been taken by the court from the procedure customarily accorded defendants in criminal cases that ought to be reviewed by the Supreme Court of the United States.

Specifically the court erred in its opinion of March 18, 1946, in the following respects, to wit:

1. The court erred in holding that "appellant claims that the Selective Training and Service Act, as amended, and regulations adopted, constitute a Bill of Attainder." Contrariwise, the record from the very outset to finality reveals that appellant holds that the court has "con-

strued" the Act and Regulations so as to constitute a bill of attainder. The Act and Regulations, the appellant holds, permit the usual defenses in a criminal trial, but the "construction" placed upon said law makes it unconstitutional as applied in the instant case. The "construction" of the Act and Regulations is called into question by the Motion to Quash (page 4, line 2 of the record); in like manner Branch 7 of the Renewal of the Motion to Dismiss calls into question the "construction" placed on the Act and Regulations by the court (page 128 of the record); and also the Renewal of Motion for Judgment of Acquittal (Branch 9, page 130 of the record) specifically states that the "construction given the Selective Training and Service Act of 1940" makes of said Act and Regulations a Bill of Attainder. An act of Congress may be constitutional on its face, but the courts by "construction and application" may make such act unconstitutional. Concordia Fire Ins. Co. v. Illinois, 292 U. S. 296.

2. The second error of the court in its opinion of March 18, 1946, lies in the assertion that the Falbo case applied and that neither "Falbo nor Dodez had exhausted his administrative remedies by reporting for induction." Such a conclusion presumes that neither Falbo nor Dodez had taken the preinduction physical examination which Falbo had failed to take. The court failed to recognize that on January 10, 1944, the law changed, by which the preinduction physical examination previously given a few minutes before induction in the case of Falbo was thereafter given at least several weeks prior to induction. Dodez took this preinduction physical examination and was accepted. That marked the end of the administrative remedies for Dodez. There was no administrative remedy left for Dodez to take, either physical examination or otherwise that could be a remedy so as to relieve him of service or training. Dodez exhausted his administrative remedies.

3. The appellant duly raised the issue of an unfair hearing both in the trial court and before the appellate court. The detailed evidence of the facts presented as an offer over the objection of the court (pages 33 to 44 of

the record) reveals the arbitrariness and prejudice of the local board. The local board members admitted that he did not have a fair hearing, and were willing to grant him a hearing. He was not granted a fair hearing within the contemplation of the law,—he was not allowed to review his file and he was not permitted to discuss his classification. The chairman of the local board first assented to a hearing, and then changed his mind over night and disallowed the hearing. The question of an unfair hearing was squarely presented to the trial court in Requested Special Instructions 31, 34 and 36 (pages 92 to 94 of the record). The question of an unfair hearing was made the first issue upon review. This question is jurisdictional. A substantive right of the appellant is involved.

Not only upon the basis of pending cases before the Supreme Court of the United States raising identical questions, but also to review the specific errors of the opinion of the court of March 18, 1946, touching substantial federal questions the appellant prays the stay of mandate.

Wherefore appellant prays that the court enter an order for stay of mandate from the United States District Court for the Northern District of Ohio, Eastern Division, until after the final order of the United States Supreme Court is issued upon petition for writ of certiorari.

(s) Victor F. Schmidt,
Attorney for George William Dodez.
Address:
8469 Pine Road,
Rossmoyne, Ohio.

CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the transcript of proceedings for certiorari application in the case of *George William Dodez* v. *United States of America*, No. 9947, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 27th day of March, A. D. 1946.

J. W. Menzies,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(seal)

Supreme Court of the United States

Order Allowing Certiorari—Filed May 6, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary docket and set to follow No. 221.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

FILE COPY

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CHARLES ELMORE CROPLEY

No. [redacted] 86

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

GEORGE WILLIAM DODEZ, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

VICTOR F. SCHMIDT
HAYDEN C. COVINGTON
Attorneys for Petitioner

INDEX

Subject Index

	PAGE
Summary of matters involved	1
Statement of case	4-8
Form of action	4
Facts	5
How issues were raised	8
Specification of errors	11
Reasons relied on for granting the writ	11
Conclusion	12
Supporting brief	13-21
Preliminary	13
Additional argument	13
Conclusion	21

Cases Cited

PAGE

Billings v. Truesdell
321 U. S. 542, 558-559 ..... 11, 15, 17, 18

Estep v. United States
— U. S. —, 66 S. Ct. 423, 425-429 ..... 2, 11, 15

Falbo v. United States
320 U. S. 549 ..... 2, 11, 13, 14, 15, 17

Gibson v. United States
— U. S. —, 66 S. Ct. 677
No. 221 Oct. T. 1945, argued and submitted Jan. 2-3, 1946; on Feb. 25, 1946, ordered reargued before full court 11, 12, 13, 21

Government's brief:
pp. 15-16 18
pp. 53-58 19

Gonzales v. Williams
192 U. S. 1, 15 20

Kansas City S. Ry. v. Ogden Levee Dist.
15 F. 2d 637 (CCA-8) 20

Smith v. United States
148 F. 2d 288 20

Utley v. St. Petersburg
292 U. S. 106 20

Statutes and Regulations cited

	PAGE
Judicial Code, Sec. 240 (a), as amended by Act of Feb. 13, 1925	1
Opinion No. 14, Director, Selective Service System	10
Rules of Criminal Appeals (May 7, 1934), Rules XI, XIII	1
Selective Service Regulations (32 C. F. R. 601.5 *et seq.*) section—	
621.13	2
622.44	2
622.51	2
623.1 (c)	2
627.25	2
629.1	2, 13
629.2	2
629.32	2
651.1-651.8	2, 13
651.10	2, 13
651.31	2
651.31 (a) (1)	17
652.1	2, 13
652.2	2, 13
652.11	2, 14
652.13	2, 16
653	17
653.1	2
653.5	2
653.11	2, 14
653.11 (a)	18
653.11 (b)	18
653.11 (c)	18
653.12	20
653.13	18
United States Code, Title 50, App. ss. 301-318 ["Selective Training and Service Act of 1940", as amended]	
[Sec. 3 (a)]	13
[Secs. 5 (d), 10 (a), 11]	2, 9
304 (a)	15
United States Constitution	
Article I, Sec. 9, clause 3	3, 8
Article III	3, 8
Amendment V	3, 8, 10
Amendment VI	3, 8

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

□

GEORGE WILLIAM DODEZ, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

□

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner, George William Dodez, presents this his petition for writ of certiorari and shows unto the Court as follows:

Summary of Matters Involved

1. *Opinion of the court below.*

Opinion of the United States Circuit Court of Appeals is not yet reported in the Federal Reporter. It appears in the record certified to this Court. [189-200]*

2. *Jurisdiction.*

The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

*Bracketed figures appearing in this petition and the supporting brief refer to pages of printed transcript of the record.

3. *Timeliness of this petition.*

The judgment of the Circuit Court of Appeals was rendered and entered on March 18, 1946. [189] The petition for writ of certiorari is filed within thirty days of that date.

4. *Statutes and Regulations Involved.*

Sections 3 (a), 5 (d), 10 (a) and 11 of the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. §§ 301-318) are drawn in question here, as well as Sections 621.13, 622.44, 622.51, 623.1 (c), 627.25, 629.1, 629.2, 629.32, 651.1-651.8, 651.10, 651.31, 652.1, 652.2, 652.11, 652.13, 653.1, 653.5 and 653.11 of the Selective Service Regulations (32 C. F. R. 601.5 *et seq.*) promulgated by the President under said Act.

5. *Questions presented.*

(1) Does acceptance upon preinduction physical examination of one classified as a conscientious objector constitute completion of the selective process and exhaustion of administrative remedies so as to qualify petitioner to challenge the legality of the administrative action in defense to an indictment charging him with failure to report for work of national importance in a civilian public service camp?

(2) Did the courts below err in holding that the rule of *Falbo* v. *United States* (320 U. S. 549) applied and that the rule of *Estep* v. *United States* (66 S. Ct. 423) did not control?

(3) Where the undisputed evidence shows that the local board was prejudiced against petitioner and violated his rights to procedural due process by denying him a full and fair hearing, may he show in defense to the indictment that the administrative agency acted illegally and unconstitutionally, and that the order on which the indictment is based is void?

(4) Did the trial court err in refusing to allow petitioner the right to show, and in refusing the jury the right to consider that the order on which the indictment was based is void because petitioner is a minister of religion exempt from all training and service for the reason that it was made (a) in excess of authority of the boards, (b) beyond the jurisdiction of the boards, (c) contrary to law, (d) contrary to the undisputed evidence, (e) without support of substantial evidence, (f) arbitrarily and capriciously, (g) contrary to the Constitution by depriving petitioner of his rights and liberty without due process of law, and (h) in violation of the Act and Regulations?

(5) Did the trial court err in holding that it and the jury could not consider the illegal and unconstitutional action of the draft boards and in limiting the issue to be decided to whether or not petitioner knowingly failed to report for work of national importance?

(6) Does the construction placed upon the Act and Regulations by the courts below, requiring petitioner to report at a civilian public service camp for work of national importance as a condition precedent to judicial review of the illegality and unconstitutionality of the action of the Selective Service System, violate Clause 3, Section 9 of Article I, Article III, and the Fifth and Sixth Amendments to the United States Constitution?

(7) Did the trial court err in denying petitioner's motion to quash the indictment, motion for an instructed verdict and for a judgment of acquittal, in excluding proffered evidence, in denying requests for charges and in charging the jury, all of which pertained to the illegality of the administrative order?

Statement of Case

FORM OF ACTION

This criminal action was instituted by indictment returned against petitioner charging him with violation of the Selective Training and Service Act of 1940, as amended, and the Regulations thereunder. [2-3]

The indictment charged that petitioner, a registrant classified as a conscientious objector, "did knowingly, wilfully, unlawfully and feloniously, fail to perform such duty required of him; that is to say, that the said defendant, did fail to report for work of national importance as ordered by said Board". [3]

Thereafter petitioner pleaded "not guilty". [3] He filed a motion to quash the indictment on the grounds that the construction placed upon the criminal sanctions clause so as to deny him his right to show, in defense to the indictment, that the orders of the Selective Service System were void and illegal, violated the Constitution of the United States. [35] The motion to quash was overruled, after argument to the court, on December 7, 1944. [9] The trial to a jury before the court began on December 7, 1944. [9] The court excluded and received evidence upon the trial. The case closed when all the evidence was in on December 7, 1944. [3, 67] At the close of the evidence, petitioner moved for dismissal of the indictment and for a judgment of acquittal [6-8, 16, 65, 127-130] and for a directed verdict of not guilty. [6-8, 16, 65, 127-130] In these motions the reasons were stated extensively. [6-8] The motions were denied with exceptions to petitioner. [16, 65] Petitioner duly submitted to the court, before argument of counsel to the jury, his requested instructions to the jury. [66-101]

On December 8, 1944, the cause was argued to the jury by counsel. [60-104] Thereupon the court charged the jury. [104-108] The court refused all of petitioner's requested

charges to the jury and allowed exceptions to his ruling. [109] Petitioner duly objected and excepted to the court's charge. [109-111] The jury retired to consider the verdict at 2:00 p.m. [12] The jury rendered its verdict of guilty on December 8, 1944, at 3:00 p.m. [112, 127] On December 15, 1944, the United States District Judge rendered judgment upon the verdict and sentenced petitioner, committing him to the custody of the Attorney General for a period of five years. [121, 130-131]

Petitioner duly served and filed his written notice of appeal in the time and manner required by law. [132] He timely filed his assignments of error which support each ground of this petition. [135-142] In due course the case was argued and submitted to the United States Circuit Court of Appeals for the Sixth Circuit. The judgment of conviction was affirmed by that court on March 18, 1946. [189]

FACTS

Petitioner registered pursuant to the Selective Training and Service Act on June 30, 1942. [156] On September 21, 1942, he filed his Selective Service Questionnaire. [146] He showed his occupation to be that of a duly ordained minister of religion since January 1941. [17, 146-148] In his questionnaire he asserted: "In view of the facts set forth in this Questionnaire it is my opinion that my classification should be 4D." [18, 148] He filed with his questionnaire certificates of ordination showing that he was recognized by the Watchtower Society, the legal governing body of Jehovah's witnesses, as an ordained minister of the gospel. [157-159] Affidavits were also filed showing that petitioner's full time was devoted to the regular performance of his duties as a minister of religion and that he stood in relation to the congregation of Jehovah's witnesses as do the ministers of orthodox denominations. [159-165] On November 25, 1942, the local board

classified him in Class I-A, sending him notice thereof on November 30, 1942. [150] Thereafter, on December 3, 1942, he requested a personal appearance before the local board pursuant to the Regulations. [167-168] On December 7, 1942, he appeared before the local board and submitted a petition signed by forty-four persons stating that they recognized him as a minister of Jehovah's witnesses and the Watchtower Society and that he regularly preached and taught the principles of Jehovah's witnesses. [168-169] At such personal appearance the local board denied him a full hearing but evidence of the denial was excluded from the record. An offer of proof was made. [33-36] He was continued in Class I-A on December 7, 1942, notice thereof being mailed to him on December 8, 1942. [150] Petitioner thereafter requested a rehearing for the opportunity to present additional evidence. This proof was rejected by the court. [36-37]

He appealed to the board of appeal on December 17, 1942. [149] In his notice of appeal he complained of the failure of the local board to give him a full and fair hearing. He also complained of the refusal of the local board to grant him a rehearing in order to enable him to offer additional evidence. [170] He accused the local board of being prejudiced, unfair and capricious. [171] Pending the determination of his appeal, he notified the local board that he had been appointed as the presiding minister of the congregation of Jehovah's witnesses at Wooster, Ohio. [172-173]

On June 11, 1943, he was notified that the board of appeal had reclassified him to Class IV-E, [150] which made him liable to do work of national importance in a civilian public service camp. Thereafter he attempted to have his case reopened. In dealing with the Government Appeal Agent and members of the local board, there were statements made about prejudice on the part of the local board. How-

ever, evidence as to this was excluded by the court. It is shown in an offer of proof. [37-44]

Additional evidence was submitted and request again made to have his classification reopened in January 1944. Such evidence consisted of an affidavit and petition stating that petitioner regularly and customarily served as and performed the duties of a duly ordained minister and presiding minister over the congregation of Jehovah's witnesses, teaching and preaching the beliefs of Jehovah's witnesses, and certifying that he was authorized to perform marriages, baptism, funeral and other ceremonies generally performed by ordained ministers. [174] The signers of the petition alleged that it would result in a hardship to them if petitioner was taken away from the congregation. [174-176] With this was submitted a certificate issued May 18, 1943, by the State of Ohio, licensing petitioner to solemnize marriages within the State of Ohio as long as he continued as a minister of the Watchtower Society. [176] This additional proof was accompanied by a letter to the local board. [179-180] The local board declined to reopen his classification.

On February 10, 1944, the petitioner was mailed Order to Report Preinduction Physical Examination directing him to appear at the local board located at 243 West Market Street, Orrville, Ohio, on February 21, 1944. [182-183] He appeared as directed and was thereafter given preinduction physical examination at the induction station on February 21, 1944. [150, 184-186] Certificate of Fitness was thereafter sent petitioner on February 28, 1944. [150, 184-185] It certified that petitioner, after having been examined upon a preinduction physical examination, had been declared "Physically fit, acceptable by Army for general military service". [51-52, 184-185] The report of Physical Examination, dated February 21, 1944, appears in the Record. [185-186]

On April 8, 1944, petitioner was ordered to report for

work of national importance. [150, 155-156] The order recited that he had been assigned to C. P. S. Camp No. 28, at Medaryville, Indiana. It commanded him to appear at his local board at 5 a.m. on April 21, 1944. [150, 155] On April 19, 1944, petitioner, by letter, acknowledged receipt of the Order to Report for Work of National Importance. [186-187] He reviewed the illegality of the action of the administrative agency and, for the reasons stated in his letter, declared that he would not report because he could not turn aside from and quit his preaching occupation that he was bound to perform in accordance with the covenant made with Almighty God. [186-187] The petitioner failed to report at the local board, as commanded, to do work of national importance. [14-15, 150]

How Issues Were Raised

By motion to quash the indictment petitioner claimed that the administrative process had been sufficiently completed so as to permit him to challenge the legality of the classification and orders based thereon. [35] He asserted that if the Act and Regulations were so construed as to deny him these defenses, they were unconstitutional because a Bill of Attainder, contrary to Clause 3, Section 9 of Article I of the United States Constitution; because they surrendered the judicial power to the draft boards contrary to Article III of the Constitution; because they denied the right to a judicial trial contrary to the due process clause of the Fifth Amendment to the United States Constitution, because they deprived the petitioner of his right of trial by jury contrary to the Sixth Amendment to the United States Constitution. [35] The trial court overruled the motion to quash with exception to petitioner. [9, 10]

The trial court erroneously excluded from evidence, over the objection of petitioner, his own testimony offered *de novo* to show his activity as an ordained minister. This

testimony was offered for the purpose of showing that petitioner was exempt from all training and service under the Selective Training and Service Act. [30-32]

The trial court erroneously excluded from evidence, over the objection of petitioner, testimony tending to show prejudice and discrimination by the local board against petitioner, and evidence tending to show that the members of the local board had denied him a full and fair hearing before that board. [33-35, 36-44]

The trial court erroneously excluded from evidence, over the objection of petitioner, testimony offered *de novo* by petitioner to establish his background and training for the ministry. [50-51]

At the close of the evidence petitioner moved for a dismissal of the indictment [127-128] and for a directed verdict [128-130] on the grounds that the undisputed evidence showed that the draft board order was void because the board acted in excess of its authority in that petitioner was a minister of religion exempt from all training and service and was not liable for training and service under the Act; that he had exhausted his administrative remedies and was in a position to challenge the action of the administrative agency and the orders on which the indictment was based; that the board had denied him his rights of procedural due process by rejecting the evidence and that the court had construed the Act and Regulations so as to require him to report for work of national importance at a CPS camp as a condition precedent to a judicial review, which denies the petitioner the right of a judicial trial contrary to the Constitution of the United States. [127-130] Each motion was denied with exception to petitioner. [65]

Petitioner duly tendered to the court requested charges to the jury. [67-100] The requested charges defined what constituted a regular or duly ordained minister of religion, stated the duties of draft boards in considering the minis-

terial status of Jehovah's witnesses under the Act and Regulations as declared by the Director of Selective Service in Opinion No. 14. The court was requested to charge the jury that if they concluded and found that the undisputed evidence before the draft boards showed that petitioner was a minister of religion and of Jehovah's witnesses and there was no substantial evidence that he was not such a minister as claimed, that they could acquit the petitioner by their verdict saying he was not guilty. The court was requested to charge the jury that if they found that the boards acted in excess of authority, without jurisdiction, contrary to law, without support of substantial evidence, contrary to the undisputed evidence, contrary to the Constitution, the Act and Regulations and arbitrarily or capriciously, they could render a verdict of not guilty. These requests were each refused separately and exception allowed to each refusal.

The court instructed the jury that the only issue to be determined was whether or not the petitioner reported for work of national importance, and if the evidence showed that petitioner failed to so report, it would be the duty of the jury to find the petitioner guilty. Petitioner objected and excepted to the court's charge on the grounds that he was thereby denied the right to urge in defense to the indictment that he was exempt from training and service as a minister of religion; that the court instructed the jury to convict him; that the instruction of the court denied him his right to a judicial trial and a trial by jury, and abridged his rights and liberty contrary to the due process clause of the Fifth Amendment to the United States Constitution. [110-111]

Throughout the trial, from beginning to end, the court held that the actions of the draft boards were binding upon petitioner, the court and the jury, and that petitioner could not challenge the same on any ground, or that his failure

to report for work of national importance was not a willful violation of the Act.

Specification of Errors

Petitioner relies upon every one of his assignments of error as grounds for a reversal of the conviction.

Reasons Relied on for Granting the Writ

The holding of the court below conflicts with the holdings of this Court in *Billings* v. *Truesdell*, 321 U. S. 542, 558-559, and *Estep* v. *United States*, 66 S. Ct. 423, 425-429.

The holding of the court below that the questions presented by petitioner are disposed of in the holding of this Court in *Falbo* v. *United States*, 320 U. S. 549, which is said to be "on all fours with the case at bar", is such a drastic departure from the usual and accepted course of judicial proceedings as to call for the exercise of the power of supervision to halt the same and correct the injustice committed against petitioner.

Inasmuch as the Selective Service Regulations have been amended since the *Falbo* decision so as not to require a physical examination at the CPS camp as a condition precedent to determining the acceptability of the registrant for work of national importance, the decision in *Falbo* v. *United States, supra*, is not apposite.

Moreover, the instant case presents to this Court a question similar to that presented to this Court in *Gibson* v. *United States*, No. 221, October Term 1945, argued and submitted January 2-3, 1946, and ordered, on February 25, 1946, reargued before the full court. (66 S. Ct. 677) Inasmuch as the petition for writ of certiorari was granted in the *Gibson* case, it should be granted in this case. Since the questions urged in the *Gibson* case were sufficiently substantial to require reargument in that case, the same and correlative questions here presented should likewise

and for the same reasons be considered substantial enough to warrant the granting of the writ of certiorari here.

Conclusion

WHEREFORE your petitioner prays that this Court issue a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; in the event the writ of certiorari is granted, petitioner prays that this cause be set for argument simultaneously or consecutively with No. 221, October Term 1945, *Gibson* v. *United States*, which has been ordered restored to the docket for reargument before the full court; and petitioner further prays that the judgment of said Circuit Court of Appeals, affirming the judgment of conviction entered by the District Court be here set aside and petitioner dismissed from custody or, in the alternative, the judgment be reversed and the cause remanded for a new trial not inconsistent with this Court's opinion; and that your petitioner be granted such other and further relief in the premises as to this Court may seem just and proper in the circumstances.

GEORGE WILLIAM DODEZ, *Petitioner*
By VICTOR F. SCHMIDT
HAYDEN C. COVINGTON
Counsel for Petitioner

SUPPORTING BRIEF

Preliminary

For a statement as to the opinion of the court below, the basis on which the jurisdiction of this Court is claimed, the questions presented, the history of the action, how the issues were raised, the evidence received and rejected and the assignments of error relied upon, reference is here made to the foregoing petition for writ of certiorari.

The points of law pertaining to the right of the petitioner to show in defense to the indictment that the administrative order is void because the selective process has ended, thus completing the administrative remedies, have been fully discussed in the briefs of both parties filed in *Gibson* v. *United States*, No. 221, October Term 1945.

ADDITIONAL ARGUMENT

The Selective Training and Service Act of 1940 (§3a) in part provides: " . . . no man shall be inducted . . . until he is *acceptable* to the land or naval forces . . . and his physical and mental fitnesss for such training and service has been satisfactorily determined." (Italics added) The administrative process beginning "with registration with the local boards" ends "when the registrant is *accepted* by the Army, Navy or civilian public service camp." *Falbo* v. *United States*, 320 U. S. 549.

Section 629.1 of the Regulations provides that every registrant must be given a preinduction physical examination, which is a final-type physical examination for registrants classified as conscientious objectors (Reg. 651.1-651.8). If the conscientious objector is found physically fit, he is then assigned by the National Director of Selective Service to a designated civilian public service camp (Reg. 651.10, 652.1, 652.2). Pursuant to such assignment, the local board issues the order to report for work of national im-

portance. After the conscientious objector has been given a preinduction physical examination and has been assigned to a particular camp by the National Director, the local board then orders him to report at the board for transportation to the civilian public service camp to which he is assigned (Reg. 652.11). The Regulations provide that after arrival at the camp the registrant shall be examined to ascertain whether there has been a change in his physical or mental condition. But irrespective of the result of the physical examination he is accepted by the camp for work of national importance (Reg. 653.11). He cannot be rejected at the camp. If a change in his condition is found, he is hospitalized. The Regulations provide that the acceptance shall be noted after the physical examination. The camp director is required to place on the form a statement that the registrant is accepted for work of national importance at the civilian public service camp to which the registrant has been assigned. The statement shall specify the date and place of such acceptance and shall be signed by the camp director (Reg. 653.11).

It is to be observed that there is said to be a difference in procedure as it is under present Regulations and as it was when Falbo was ordered to report for induction. Now it is impossible for a registrant to be rejected at the CPS camp after having reported. The court has said that this was not true at the time Falbo was ordered to report for induction (*Falbo* v. *United States*, 320 U. S.): "The selectee may still be rejected at the induction center and the conscientious objector who is opposed to noncombatant duty may be rejected at the civilian public service camp."

It is manifest that the acceptance upon a preinduction physical examination ends the selective process. Petitioner was ordered to report for work of national importance after an amendment of the Selective Training and Service Act, dated December 5, 1943, which provided for acceptance

upon a preinduction physical examination before the order to report is issued. (50 U. S. C. App. §304 (a))

In *Billings* v. *Truesdell*, 321 U. S. 542, by a construction of the Regulations and the Act, it was ruled that at this point in the proceedings a registrant, when found physically and mentally fit, was to be deemed "acceptable" and is "accepted". The very next step, induction, was not and is not a part of the *selective process*. Unmistakably, the court pointed out that the *Falbo* decision was not to be construed as holding that a man must submit to induction before he could be said to have exhausted his administrative remedies, but that the *selective process* ended when he was accepted and that thereafter he could refuse to submit to induction:

"But we can hardly say that he must report to the military in order to exhaust his administrative remedies and then say that if he does so report he may be forcibly inducted against his will. That would indeed make a trap of the *Falbo* case by subjecting those who reported for completion of the Selective Process to more severe penalties than those who stayed away in defiance of the board's order to report."

The foregoing quoted portion of the *Billings* opinion is a forcible demonstration of the misapprehension by the court below of the Regulations governing petitioner's acceptance and assignment to a CPS camp, and his status at the time he received the order to report for work at the camp. The court below said that "after reviewing *Estep* and *Smith* cases in detail and noting that no attempt is made therein to reverse *Falbo* v. *United States* (supra), we conclude that the *Falbo* and not the *Estep* and *Smith* decisions apply here. We believe the cases are identical since neither Falbo nor Dodez had exhausted his administrative remedies by reporting for induction. In the case at bar had draftee so reported and then refused to be inducted, the *Estep* and *Smith* decisions would have been controlling." [193-194]

It should be observed that it was impossible for petitioner to be inducted at the civilian public service camp. Indeed, there is no induction ceremony at the camp. There is no line drawn in the Regulations whereby a point is fixed permitting the registrant to choose between induction and refusal to be inducted with prosecution under the Act, as in the case of registrants ordered to do training and service in the armed forces. In the case of registrants classified as conscientious objectors, the Regulations provide that the registrant is under the jurisdiction of the camp to which he is assigned after leaving the local board where he has reported in pursuance to the order commanding him to do work of national importance. (Reg. 652.13) It is manifest that the court below confused the distinction between the well defined procedure of registrants ordered to do work of national importance and registrants ordered to do training and service in the armed forces. The fact that one classified in 1-A may not exhaust his remedies until he has undergone the final physical examination at the induction station given by the armed forces upon his reporting pursuant to an order to report for induction, cannot be taken as a guide for determination that a registrant classified in IV-E has not exhausted his remedies until he has reported at the civilian public service camp. Since it is impossible for a registrant to be rejected at the civilian public service camp, and inasmuch as there is no physical examination given at said camp for the purpose of determining the acceptability of the registrant, it is unnecessary for one classified as a conscientious objector to report to the local board or to the CPS camp in response to an order to report for work of national importance in order to exhaust his administrative remedies. Indeed the remedies have been exhausted upon the taking of the pre-induction physical examination long before the order to report for work of national importance is issued.

Petitioner was not indicted for failing to perform any

one of the steps in the selective process, but was prosecuted and convicted for not having reported for the sole purpose of submission to work of national importance. The last step in the selective process had been completed before the order to report for work of national importance had issued. He was indicted, prosecuted and convicted for refusal to report for work of national importance and not for failing to take the last step in the selective process.

Therefore petitioner's refusal to report for service at the camp is the only assignable reason why the court below ruled that he could not contest the legality of his classification in defense to the indictment. But under the above quoted portion of the *Billings* opinion petitioner did not have to be "actually inducted" or report for work of national importance in order to raise his defense. He did not have to report to the camp, be assigned and start to work there, any more than did *Billings* have to take the army oath, be assigned to service in the armed forces and shoulder a gun. When petitioner was found physically fit and acceptable for general military service upon his preinduction physical examination at the induction station *he was "acceptable* for work of national importance under civilian direction." (Italics added) (Reg. 651.31 (a) (1)) He had been officially and finally *accepted,* as indicated by the subsequent notice to report to camp, sent by the Director of Selective Service who is in charge of the CPS camps. (Reg. 653) Thus petitioner exhausted his administrative remedies and, under the rules set forth in the *Falbo* opinion itself as amended and clarified by the *Billings* opinion, he was then in a position to urge the illegality of his classification as a defense against the indictment.

In the *Billings* opinion (*supra*) it was said that the fact that one may have been accepted several weeks before he was ordered to report for induction would not alter the case. The fact that petitioner may have been accepted several weeks before he was ordered to report for work of

national importance did not change the fact that he was actually accepted for work of national importance in a CPS camp. The final irrepealable order of General Hershey assigning him to do work of national importance had been theretofore issued. In *Billings* v. *Truesdell, supra,* it is said: "It is difficult to see why there would be a difference in result if the interval between the time when he is found acceptable or is accepted and the ceremony of induction were only a few minutes, as in the present case, rather than a few weeks." It is only administrative remedies that one is required to exhaust in order to qualify himself for judicial review. Inasmuch as there was no possibility of petitioner's obtaining any remedy by being rejected at the civilian public service camp, it was unnecessary for him to report at the camp to do work of national importance. The Regulations are now adverted to show that there was no remedy available to him at the camp. Section 653.13 of the Regulations provides that the registrant is under the jurisdiction of the camp after leaving his board, following his reporting at the board to be transported to the camp. Section 653.11 (a) requires the director, on arrival of the registrant at the camp, to fill out the order to report for work of national importance. Section 653.11 (c) of the Regulations declares that acceptance at the camp is completed by filling out the order to report. Section 653.11 (b) provides for a cursory physical examination, but inasmuch as Section 653.11 (c) provides that acceptance shall be made irrespective of the physical examination, it is impossible for a registrant to be rejected at the camp.

In the Government's brief (pp. 15-16) filed with the Court in *Gibson* v. *United States,* No. 221 October Term 1945, *supra,* it is said, *inter alia,* "We are unable to agree with petitioner (Br. 17) that it is necessary for a registrant to undergo the physical examination at the camp 'in order to finalize and complete his acceptance at the camp.' Since every registrant who has passed his preinduction physical

examination and is assigned to a camp by the Director of Selective Service must be accepted at the camp (Reg. 653.11 (c)), it is plain that the examination at the camp is not a part of the process of determining the registrant's acceptability. Indeed, in petitioner's case, he was accepted at the camp several days before he was examined by the camp doctor (see fn. 8, p. 17, and pp. 53-58, *infra*).

"... It is in this latter respect that the procedure differs from that which prevailed at the time of *Falbo's* case. At that time it was possible for a registrant to be rejected upon examination at the camp (see 320 U. S. at 553) and the procedure thus paralleled the procedure for inducting men into the armed forces. . . .

"Unlike the procedure which prevails for registrants going into the armed forces (see *Billings* v. *Truesdell*, 321 U. S. 542, 553-554), in the case of a registrant assigned to a Civilian Public Service Camp there is no induction process. The reason for the difference in procedure may be found in the fact that only a registrant who has claimed exemption from military service because he is conscientiously opposed to all war is classified IV-E and assigned to a camp. Section 5 (g) of the Act requires that any person 'claiming such exemption' shall 'be assigned to work of national importance.' Since by asserting the claim the registrant necessarily acquiesces in his assignment to work of national importance, there is no occasion for an induction ceremony in which he will be able to choose between submitting to work of national importance and defying the Act."*

It would be a hollow formalism to require petitioner to report for work of national importance and to appear at the camp for the mere purpose of having the director fill out a form showing that he had been accepted, when there

*The material mentioned in footnote 5 of the Government's brief in the *Gibson* case (quoted above) is a letter from the Selective Service System to the Attorney General, which letter is set forth in said brief at pages 53-58.

is no possibility for appellant to get any relief by being rejected. Indeed, Section 653.12 of the Regulations makes it a mandatory duty for a registrant to remain at the camp after reporting there. Such further step of reporting need not be complied with as a condition precedent to judicial review: *Utley* v. *St. Petersburg*, 292 U. S. 106; *Kansas City S. Ry.* v. *Ogden Levee Dist.* (CCA-8) 15 F. 2d 637. See also *Gonzales* v. *Williams*, 192 U. S. 1, 15, where, with reference to an argument about exhaustive administrative remedies, the court said: "She was not obliged to resort to the superintendent or the secretary."

The efforts on the part of the court below to hold the action of the trial court in rejecting evidence pertaining to, and in refusing to consider or permit the jury to consider whether the local board had denied petitioner a full and fair hearing, was harmless error, fails to make the judgments of the courts below impervious to attack here. A similar effort was attempted by the court of appeals in the case of *Smith* v. *United States*, 148 F. 2d 288. (See the last point discussed in that opinion) This Court reversed the judgment in the *Smith* case because the trial court refused to exercise its judicial function. There the trial court failed to pass upon the issue raised. It refused to permit the jury to consider the issue. The questions for determination by the court and jury were limited to whether or not the defendant complied with the order. The same failure to exercise the judicial function is prevalent here. The trial court did not pass upon the merits of petitioner's defense. It was error for the court of appeals to weigh the merits of the defense in affirming the judgment. If the Court of Appeals can consider the defense, then it was also the duty of the trial court to consider the defense. Inasmuch as the trial court did not consider it or permit the jury to consider it, the error cannot be cured by the rationalization of the court of appeals. (*Smith* v. *United States, supra*)

Conclusion

It is submitted that this case is one calling for the exercise by this Court of its supervisory powers under the Judicial Code and the Rules of this Court. To that end the petition for writ of certiorari should be granted so as to correct the assigned errors committed; in event the writ of certiorari is granted petitioner prays that this cause be set for argument simultaneously or consecutively with No. 221, October Term 1945, *Gibson* v. *United States*, which has been ordered restored to the docket for reargument before the full court; and petitioner further prays that the judgment rendered by the Circuit Court of Appeals and the District Court against petitioner should be reversed and petitioner discharged, or, in the alternative, the judgments should be reversed and a new trial ordered.

Respectfully submitted,

VICTOR F. SCHMIDT
HAYDEN C. COVINGTON
Counsel for Petitioner

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 86

GEORGE WILLIAM DODEZ, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITIONER'S REPLY BRIEF.

HAYDEN C. COVINGTON,
VICTOR F. SCHMIDT,
Counsel for Petitioner.

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INDEX.

Cases Cited.

	Page
Baltimore Carolina Line v. Redman, 295 U. S. 654	4
Estep v. United States, 66 S. Ct. 423	3
Ex parte Cain, 39 Ala. 440	4
Gibson v. United States, No. 23, October Term, 1946	3
Lehr v. United States, 139 F. 2d 919, 921-923	4
Murdock v. Pennsylvania, 319 U. S. 105	4
Offord v. Hiscock, 86 L. J. K. B. 941	4
Smith v. United States, 150 U. S. 50	4
Smith v. United States, 66 S. Ct. 423	3
Swaczyk v. United States, No. 290, October Term, 1946	4
United States ex rel Hull v. Stalter, C. C. A. 7th Ct., 151 F. 2d 633	3
United States ex rel Trainin v. Cain, C. C. A. 2d, 144 F. 2d 944	4
Wise v. Withers, 3 Cranch 329	4

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GEORGE WILLIAM DODEZ, *Petitioner*,

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PETITIONER'S REPLY BRIEF.

The petitioner in this case objects to the Government's suggestion as to the disposition of the case upon a remand to the trial court because the Government attempts to limit the rights of the petitioner upon a remand to a new trial. Petitioner is entitled to more than a new trial. He is entitled to have the indictment dismissed by the trial court, which should be required to order the discharge of petitioner.

Upon the trial in the district court all material parts of the entire draft board file were received into evidence. It is true that upon the trial the court committed many procedural errors in excluding evidence in respect to the failure of the local board to give petitioner a full and fair hearing

and in charging the jury and in refusing the petitioner's requested charges, all of which require that the judgment should be reversed and a new trial ordered.

But also upon the trial the evidence was fully developed on whether the draft board arbitrarily and capriciously classified the petitioner and illegally denied him his claim for exemption as a minister of religion under the Act and Regulations.

The illegality of the administrative action in this respect was squarely presented to the trial court upon the motion for a directed verdict and for a judgment of acquittal filed at the close of the evidence in the case. (R. 5, 6-7, 8, 65) The motions were overruled. (R. 65) Exceptions were taken to these rulings. (R. 66) These exceptions were duly brought forward in the assignments of error. (R. 139) The court of appeals passed upon the validity of the classification and administrative action and held that it was not invalid. (R. 191-200) The errors of the court in holding that the trial court did not commit an error in overruling the motions were brought forward to this court in the petition for writ of certiorari. (See the petition pages 2-3, 9). These errors are complained of in petitioner's main brief. (See pages 14-15, 20-21) In the petition (p. 12) as well as in the petitioner's main brief (p. 69) petitioner requests the court to reverse the case, order the indictment dismissed and discharge the petitioner from custody.

While the Government concedes that there is a "nice question concerning the factual foundation upon which the board's classification rests" (see Government's brief p. 16) it merely suggests that the case be remanded for a new trial so that it can decide whether to *nol prosse* the indictment. This relief requested by the Government is not sufficient. It does not guarantee to the petitioner that justice will be done. The case has been fully developed because the entire draft board file was received in evidence. Upon another trial there will not be any new or additional evidence on the illegality of petitioner's classification.

The petitioner has a right to request this court to protect him from the trouble and expense of going through another trial in this case by *holding now* that the indictment should have been dismissed. He should not be put to the uncertainty of what the Selective Service System will advise the Department of Justice as to the correctness of petitioner's classification. The Selective Service System has already considered his claim for exemption and in passing upon it denied his claim. It is assumed that inasmuch as the System referred Dodez to the Department of Justice for prosecution that the System will be consistent and advise the Department again that he was properly denied exemption. The inclination of the Government to the view that petitioner may have been illegally classified now should be taken by the Court as grounds for *ordering now* that the indictment be dismissed and that petitioner be discharged.

On many previous occasions before this Court counsel for petitioner have argued as to the ministerial status of Jehovah's Witnesses and the illegality of draft board determinations in denying them their claim for exemption as ministers of religion. It should not now be necessary to again repeat such argument here. The invalidity of the draft board action in denying petitioner his claim for exemption as a minister of religion is fully established by the argument made by counsel for petitioners in the cases styled *Smith* v. *United States*, and *Estep* v. *United States*, Nos. 66 and 292, October Term, 1945. (See Joint Brief for Petitioners in those cases pages 131-190.) Reference is here made to such argument. It is incorporated herein as though copied at length herein. See also the Petitioner's Reply Brief Reargument in *Gibson* v. *United States*, No. 23, October Term, 1946 (pages 11-19). For each and every one of these reasons the undisputed evidence shows that the administrative action is illegal because of the fact that the decision of the board was illegal, arbitrary and capricious and without basis in fact. *Estep* v. *United States*, 66 S. Ct. 423; *United States* ex rel *Hull* v. *Stalter*, C. C. A. 7th, 151

F. 2d 633; *United States* ex rel *Trainin* v. *Cain*, C. C. A. 2d 144 F. 2d 944, certiorari denied, 323 U. S. 795; Ex parte *Cain*, 39 Ala. 440; *Offord* v. *Hiscock*, 86 L. J. K. B. 941; *Wise* v. *Withers*, 3 Cranch 329; *Murdock* v. *Pennsylvania*, 319 U. S. 105, 106-109, 110, 111, 117; *Lehr* v. *United States*, 139 F. 2d 919, 921-922. See also the Petition for Writ of Certiorari in *Swaczyk* v. *United States*, No. 290 October Term, 1946, pages 15-18, 21-41.

It is fundamental that if the undisputed evidence shows that the petitioner is not guilty of the offense charged it is the duty of the appellate court to render a judgment dismissing the indictment which should have been rendered by the trial court. Since the draft board file is all in evidence it is manifest that a new trial will not correct the illegality of the classification that now appears from the record. Under the circumstances the judgment should be reversed and the trial court should be ordered to dismiss the indictment and discharge the petitioner from custody. *Smith* v. *United States*, 150 U. S. 50; and *Baltimore Carolina Line* v. *Redman*, 295 U. S. 654.

CONCLUSION.

WHEREFORE the petitioner prays as in his petition for writ of certiorari and as in his main brief that the judgment of the trial court and of the court of appeals be reversed and that the cause be remanded to the trial court with instructions to dismiss the indictment and for discharge of petitioner from custody. In the alternative, the petitioner prays for a remand of the case with instructions for a new trial as prayed for by the respondent in its brief. Petitioner prays for such other and further relief to which he may show himself justly entitled.

HAYDEN C. COVINGTON,
VICTOR F. SCHMIDT,
Counsel for Petitioner.

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No. 1103

In the Supreme Court of the United States

OCTOBER TERM, 1945

GEORGE WILLIAM DODEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	2
Argument	11
Conclusion	24
Appendix	26

CITATIONS

Cases:

Bowles v. *United States*, 319 U. S. 33 ..... 21, 23

Estep v. *United States*, *Nos. 66 and 292, decided February 4, 1946* 11, 12, 15, 16, 17, 24

Falbo v. *United States*, 320 U. S. 549 ..... 11, 12, 13, 14, 21, 24

Gibson v. *United States*, No. 221, this Term 12, 13, 24

Smith v. *United States*, No. 66, this Term 13, 24

Statute and Regulations:

The Selective Training and Service Act of 1940, as amended, 54 Stat. 885 (50 U. S. C. App. 301, *et seq.*):

Section 5 (d)	26
Section 10 (a) (2)	16, 26
Section 11	26

Selective Service Regulations:

622.44	27
622.51	27
626.2	22, 23, 28
627.12	6
629.1	13, 29
629.2	13, 29
629.32	13, 30
652.11	13
652.13	14, 31
653.11	14, 31

692109—46

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 1103

GEORGE WILLIAM DODEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 189–200) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered March 18, 1946 (R. 189). The petition for a writ of certiorari was filed April 12, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.[1]

[1] The petition was filed less than 30 calendar days after the judgment of the circuit court of appeals and is therefore

QUESTION PRESENTED

The principal question presented is whether petitioner, a Jehovah's Witness who had claimed classification as a minister of religion and who was classified as a conscientious objector, was illegally so classified by his board of appeal.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Selective Training and Service Act and of the Selective Service Regulations are set forth in the Appendix, *infra*, pp. 26–32.

STATEMENT

Petitioner was indicted (R. 2–3) in the United States District Court for the Northern District of Ohio in one count charging a violation of Section 11 of the Selective Training and Service Act of 1940. The indictment alleged that pursuant to petitioner's claim that he was a conscientious objector, he was classified in IV–E and ordered to report on April 21, 1944, for work of national importance, and that he knowingly failed to do so. He was convicted after a jury trial (R. 112) and was sentenced to imprisonment for five years (R. 130–131). Upon appeal to the Circuit Court of Appeals for the Sixth Circuit, the judgment was affirmed (R. 189).

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timely whether governed by Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934, or by Rules 37 (b) (2) and 45 (a) of the new Rules of Criminal Procedure, effective March 21, 1946.

It was undisputed at the trial that petitioner was finally classified in IV-E by his board of appeal; that he thereafter reported for a pre-induction physical examination and was found acceptable for service; that the local board thereafter ordered petitioner to report on April 21, 1944, for work of national importance; and that petitioner willfully refused to comply with the order of his local board (R. 13–15, 56–57). The sole disputed issue concerned the legality of the administrative proceedings in which petitioner's claim to classification as a minister of religion in the Jehovah's Witnesses sect was rejected and his claim to classification as a conscientious objector was granted. The relevant facts, as reflected by petitioner's selective service file, which was received in evidence (R. 15, 17),[2] may be summarized as follows:

Having registered on June 30, 1942, with Local Board No. 2, Wayne County, Ohio (R. 13, 156), petitioner, on September 21, 1942, filed his selective service questionnaire (R. 146–150), in which he stated that he was 20 years of age; that he had a high school education; that since Jan-

[2] While the entire selective service files was received in evidence, the printed record before the Court includes only some of the documents in that file. In order that documents in the file which we believe are relevant and which are not printed in the record may be considered by the Court, we have lodged with the Clerk the same photostatic copies of all the documents in the file which were before the court below (see R. 144–145).

uary 1941, he had been affiliated with the Watchtower Bible and Tract Society; that he was an ordained minister of religion with "1¾ years experience in this kind of work"; that he was also a farmer from 1938 to 1942; that he was conscientiously opposed to all war; and that he believed he was entitled to a IV–D classification, as a minister of religion.

On September 26, 1942, petitioner filed a special form for conscientious objectors (R. 150–154), in which he stated that he was opposed by reason of religious training and belief to both combatant and noncombatant military service; that he believed in the use of "force in the fight for righteousness" but that "if one is going to be a Christian he must not take part in the affairs of this world because the world is against Christ's Kingdom"; that since January 1941 he gave expression to his religious beliefs by "witnessing at every opportunity from house to house and on the street and elsewhere"; and that the Jehovah's Witnesses organization has "No creed or official statements—each person must make his own choice and take his own stand for the New World."

Petitioner also filed with the local board an affidavit (R. 160–162) in which he said that he had been a member of Jehovah's Witnesses since July 1941; that since May 6, 1942, he had been a pioneer in the sect, which occupied "the greater

amount of my time"; that "the duties that I perform as a pioneer is to go from house to house and preach the gospel of the Kingdom and declare the day of vengeance of Jehovah, to comfort all that mourn, place literature and assist interested parties in gaining knowledge of the truth"; and that he had been commissioned by the Watch Tower Bible and Tract Society "to preach the gospel of God's kingdom." Petitioner's claim was supported by affidavits of other persons and by documents purporting to show that he was an ordained minister of religion (R. 157–160, 163–165).

On October 26, 1942, the local board by a vote of 4 to 0 classified petitioner I–A, as available for military service, with a notation in its minutes, "Selling Jehovah Witness Literature at Public Square" (R. 149). On November 25, 1942, the local board reaffirmed the I–A classification with the notation in its minutes, "not an ordained minister as per public recognitio" (R. 150). Petitioner then requested a personal appearance before the local board (R. 167–168) and the minutes of the board reveal that on December 7, 1942, a hearing was had, and that after reconsidering the case, the board again reaffirmed the I–A classification (R. 150). Petitioner's request for a second hearing was denied (see R. 169), and on December 17, 1942, he appealed to the board of appeal (R. 149). As permitted by

Selective Service Regulation 627.12,[3] petitioner included in his notice of appeal (R. 170–171) a summary of the facts concerning his hearing before the local board on December 7, 1942, and his efforts to secure a second hearing; he urged that he be classified IV-D because "all the facts in my file and case show that I have been a regular minister of religion since May 7, 1942, prior to my registration of June 30, 1942," and because the local board acted capriciously and with prejudice in classifying him I–A.

While the case was pending on appeal before the board of appeal, petitioner submitted information to the local board to the effect that on January 21, 1943, he became "the head of the entire Wooster [Ohio] Company [of Jehovah's Witnesses], that is head of a congregation," and requested that the local board reconsider his classification (R. 173). It appears from correspondence dated May 7, 10, and 12, 1943, (see fn. 2, *supra*), that all of this material was forwarded

[3] This Section provides:

"The person appealing may attach to his notice of appeal or to the Selective Service Questionnaire (Form 40) a statement specifying the respects in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file."

to the board of appeal for consideration by it in classifying petitioner.

In the meantime, a Department of Justice hearing officer conducted a hearing into petitioner's claim that he was a conscientious objector, and the Federal Bureau of Investigation investigated the claim.[4] The Department recommended that petitioner be classified as a conscientious objector, and on June 4, 1943, the board of appeal so classified petitioner. More than seven months later, on January 15, 1944, petitioner again submitted to the local board additional evidence purportedly "proving my status as an Ordained Minister," and he requested that his classification be reopened (R. 179–180). It appears from a letter dated February 10, 1944, contained in the selective service file, that the local board reviewed the information submitted and concluded that it did not warrant reopening the classification.

At petitioner's request[5] his selective service file was reviewed by National Headquarters of the Selective Service System, and it was "determined

[4] In the course of the investigation, an F. B. I. agent interviewed petitioner's father-in-law, who told him that petitioner devoted five hours a day to his Jehovah's Witness activity and that he devoted the remainder of his time to assisting his father-in-law in operating a 500 acre farm and in "custom threshing" and "going from farm to farm threshing for other farmers" (see p. 5 of the hearing officer's report, which is contained in the selective service file).

[5] See his letter in the selective service file of February 18, 1944.

that the record does not contain any evidence which would justify National Headquarters in interfering with the classification of the registrant."[a]

It was at this juncture of the administrative proceedings that petitioner was physically examined and found acceptable for service and was ordered to report for work of national importance, in lieu of military service (*supra*, p. 3).

In addition to the documentary evidence summarized above, the trial court permitted petitioner to adduce *de novo* evidence calculated to show that as of the time of the trial he was a minister of religion. Mrs. Sauer testified that the Jehovah's Witnesses organization in Wooster, Ohio, had no membership as such, but that she was affiliated with the Jehovah's Witnesses (R. 23); and that she had signed a document stating that she recognized petitioner as a minister of religion who preaches and teaches the principles of the Watchtower Bible and Tract Society, Inc. (R. 22, 158). On cross-examination she testified that she was a Jehovah's Witness, but that she was not a minister of religion (R. 25).

Petitioner testified on direct examination that at the time that he registered under the Selective Training and Service Act and thereafter, he "was a duly ordained minister of the Gospel, preaching the Gospel of the Kingdom only" (R. 26).

[a] See the letter in the file of August 9, 1943, from State Headquarters to the local board.

He said that he relied upon the Scriptures for his ordination and that his ministerial status commenced in January 1941, when he received an identification card from a representative of the Watchtower Society which, as he testified, stated that anyone possessing such a card is a minister of religion. (R. 28–29). Petitioner testified that after receiving the card he "began to preach the Gospel of the Kingdom in accordance with the regulations stated by the Watchtower Society" by preaching "the Gospel of the Kingdom from house to house, in territory that I am definitely assigned" (R. 29); "I call on each individual in that territory, and present to them the Message of the Kingdom. Those who are interested, a call is made at a later date, and a Bible study is arranged in their home" (R. 29). Petitioner said that in addition he conducts funeral and baptismal services, delivers sermons, looks after the congregation, sees that the bills of the church are properly taken care of, and that someone takes care of cleaning the church building (R. 30).

Petitioner described the course of study which he pursued to become a minister as follows (R. 48, 49):[1]

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[1] Petitioner also offered to prove (R. 50–51) that he studied:

"Non-Theocratic references; parts of speech; history of the Bible; the use of pronouns; the use of verbs; features of 'The Emphatic Diaglott'; arguments; impromptu speaking; advantages of exhaustive concordances; Theocratic tactfulness."

The course that I have studied, that I pursued to become a minister, consisted of many different subjects, such as: Gathering material for a sermon; how to use different Bible helps; the use of the Watchtower Bible helps in particular; need of an outline for a sermon; the construction of a sermon; then the delivery of a sermon, and the different methods of delivering a sermon; extempore speaking; how to use Concordances; the introduction of a sermon; developing the body of a sermon; different types of conclusions for a sermon—

* * * * *

The last one, I believe, was different types of conclusions for a sermon. The oral emphasis in a sermon; gestures in delivering a sermon; use of the dictionary, and use of a Bible dictionary, and choice of words in a composition of a sermon; building a vocabulary; reasons for different Bible translations; sentence construction of a sermon; the variety of sentence construction in a sermon; God's Word on vital subjects that are contained in the Bible; need for argumentation; argumentation in a sermon; the evidence in argumentation; Watchtower Bible "Proper Names"; "Proper Names"; audience fear; modulation; poise; construction; how to study the "Watchtower"; refutation; coherence; non-Theocratic references; parts of speech;—

On cross-examination petitioner testified that 102 persons are associated with the Jehovah's

Witnesses in Wooster, and that each possesses an identification card which is the same as his, and that each is therefore a minister (R. 52–54). Thereafter, on redirect examination he explained that these persons are not ministers in the same sense that he is (R. 57, 60); that he is the "managing agent" for the Watchtower organization in Wooster (R. 63).

In submitting the case to the jury, the trial judge instructed them that the Selective Training and Service Act provides that the decisions of the local boards shall be final, except where an appeal is taken (R. 105). The jury was further instructed (R. 107) that they should find petitioner guilty if they found that he was a male person who had registered under the Act and who knowingly failed to report for work of national importance in accordance with an order of his local board. (See also R. 108–109, 110).

ARGUMENT

The Circuit Court of Appeals for the Sixth Circuit, after analyzing the decisions of this Court in *Falbo* v. *United States*, 320 U. S. 549, and *Estep* v. *United States*, Nos. 66 and 292, decided February 4, 1946, concluded that petitioner is in exactly the same position as was Falbo, and that he therefore was not entitled to challenge the legality of his selective service classification in this criminal prosecution (R. 191–194). Notwithstanding this fact, the court below carefully

examined petitioner's selective service file and the other evidence adduced or offered at the trial bearing on the legality of the classification, and concluded that petitioner tendered nothing which, under the scope of review defined by the *Estep* decision, showed that his classification is in any respect illegal (R. 194–200).

1. Petitioner's principal contention (Pet. 11-20) is that the court below erred in its application of the *Falbo* decision to this case. Adopting the view which the Government urged before this Court in *Gibson* v. *United States*, No. 221, this Term, which is now pending for re-argument, petitioner urges that in January 1944, after the *Falbo* decision, the selective service procedure for the assignment of registrants classified IV-E to Civilian Public Service Camps was amended and, as a result, the final determination of acceptability now is made at a point in the process before the registrant is ordered to report for work of national importance. Since he was finally accepted for service, petitioner argues that he is entitled to challenge his classification in the criminal trial, even though he did not comply with the order to report for work of national importance.[8]

[8] One of the petitioner's counsel of record was also counsel for the petitioner in the *Gibson* case. In that case, which is governed by the same administrative procedure applicable to this case, Gibson's counsel urged in his brief, pp. 17–19, that it was necessary for a registrant assigned to a Civilian

We adhere to our position in the *Gibson* case and, thus, agree with petitioner in this aspect of the case. As we pointed out in our brief in the *Gibson* case (pp. 13–17, 53–58), after a registrant is classified IV–E, he is ordered to report for a physical examination (Reg. 629.1-629.2). If he is found to be fit for work of national importance, he is issued a certificate of fitness, which constitutes the final administrative determination of his acceptability (Reg. 629.32). Thereafter, he is assigned to a Civilian Public Service Camp by the Director of Selective Service, and the local board thereupon issues its order to report for work of national importance (Reg. 652.11). As soon as the registrant leaves his local board en

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Public Service Camp "to report at the camp and undergo the physical examination given by the camp in order to finalize and complete his acceptance at the camp under the Act and regulations." At page 19, counsel concluded that since acceptance under the Regulations as they exist now cannot be finalized until the registrant reports at the camp and undergoes the physical examination, under the doctrine of the *Falbo* decision, Gibson could not have exhausted his remedies until he had been accepted at the camp. If this view is correct, petitioner, by failing to report to the camp, neglected to exhaust the administrative process, and under the *Falbo* decision he is not entitled to challenge his classification in the criminal trial.

Registrants classified for military service are given a second physical examination at the induction station after they have responded to the induction order. Hence, in their cases, their administrative remedies have not been exhausted until they are found acceptable at the induction station. See Brief for the United States, p. 14, in the *Smith* case, No. 66, this Term.

route to the camp, he is "under the jurisdiction of the camp to which he is assigned" (Reg. 652.13). Every registrant who reports to the camp to which he is assigned is accepted by the camp director; since February 1944 the camp director has possessed no authority to reject a registrant (Reg. 653.11).

It is in the latter respect that the procedure differs from that which prevailed at the time of *Falbo's* case. At that time, it was possible for a registrant to be rejected upon examination at the camp (320 U. S. at 553), and the administrative process thus was not exhausted until the registrant was physically examined at the camp and was found acceptable.

The court below evidently was not aware of the fact that the selective service procedure was changed subsequent to the *Falbo* decision, for it held (R. 194), relying upon the procedure described in the *Falbo* opinion, that petitioner had not exhausted his administrative remedies because he did not report to the camp to which he was assigned and that he therefore was in the same position as Falbo. However, petitioner did complete every step in the process short of reporting to the camp; he reported for physical examination and was issued a certificate of fitness (R. 51), which was the final determination of petitioner's acceptability. In these circumstances, if our view of the selective service procedure is correct, peti-

tioner had exhausted his administrative remedies. Accordingly, we think that he is entitled in the criminal proceeding to challenge his selective service classification to the extent permitted by this Court's decision in the *Estep* case.

2. Our view as to petitioner's right to challenge his classification does not require that he be given a new trial. For, as we have shown, the trial judge permitted petitioner to introduce into evidence his selective service file, as well as independent testimony concerning the events before the selective service boards, and to make full offers of proof as to all evidence which was excluded, and the court below held that nothing which petitioner aduced or offered to prove supports his contention that he was illegally classified.

We think that two major defects permeate petitioner's theory of defense in the trial court and that, as a result, petitioner neither proved nor offered to prove any facts which would show that he was not finally classified in conformity with the Selective Service Regulations or that there is no basis in fact for his classification. (See *Estep* v. *United States*, slip opinion, pp. 6–7.)

a. Consistently with the practice of Jehovah's Witnesses in other cases, petitioner defended against the indictment by seeking to show *de novo* that he is, in fact, a minister of religion and is thus exempt from service under the Selective Training and Service Act. As we have shown in

the Statement, *supra*, pp. 8–11, he adduced evidence showing his alleged preparation for the ministry and showing his day to day activities as of the time of the trial, which were believed to show that he was a regularly practicing minister of religion. Much of the evidence in this respect was evidence which was not presented to the selective service boards and was, of course, not considered by them in classifying petitioner. We think this evidence was improperly received and that under no tenable theory could it be a defense to the indictment.

The issue in the criminal trial was not whether petitioner is a minister of religion. For that is a question the determination of which is lodged exclusively in the Selective Service System; section 10 (a) (2) of the Selective Training and Service Act specifically provides that the selective service boards shall have power to hear and determine "all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act," and it provides that the decisions of the selective service boards shall be "final." As this Court pointed out in the *Estep* decision (slip opinion, pp. 6–7), "The provision making the decisions of the local boards 'final' means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are

not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant." Thus, the issue in the trial court was whether petitioner was classified in conformity with the selective service regulations or, as this Court stated in the *Estep* case, whether the selective service agencies exceeded their jurisdiction in classifying petitioner.

In support of such a defense, we think petitioner was entitled to attempt to show that on the evidence before the selective service boards there was no basis in fact for refusing to classify him as a minister of religion, or that the final classification upon which the induction order was predicated was not made in conformity with the Selective Service Regulations, either because he was denied an opportunity to adduce evidence, because the final classifying board acted arbitrarily or with prejudice, or because of some similar defect of substance. Petitioner's *de novo* evidence, which he adduced or offered at the trial, could not under any theory be probative on these issues. Certainly, evidence of what petitioner was doing many months after he was finally classified does not show that the classifying board acted in the

teeth of the regulations or the evidence before it. Nor would evidence of his activities before or at the time he was classified, which was not submitted to the Selective Service boards, show illegal action by the classifying board. In our view, the final classification must be tested solely on the administrative record, with the exception that a registrant may show procedural irregularities by going outside the record. A classifying board, we think, cannot be charged with arbitrariness because there may have been evidence which supported the registrant's position, but which was not seasonably presented to the board, although there was opportunity for doing so. Accordingly, we submit that petitioner's evidence concerning his asserted ministerial status, which was adduced initially at the trial, is not relevant to the issue presented by the case.

b. The second major defect in petitioner's theory of defense in the trial court is that, to a large extent, his proof was directed to a superseded classification—the I-A classification given him by his local board. As we have shown in the Statement, *supra*, pp. 5-7, petitioner was classified I-A by his local board and thereafter he appealed to the board of appeal, specifying the errors which he believed the local board committed. The board of appeal, after securing the recommendation of the Department of Justice, classified petitioner IV-E, and it was upon the

basis of this classification that petitioner was ordered to report for work of national importance. If the local board's I–A classification had stood, petitioner, of course, would have been ordered to report for induction into the armed forces.

We think it is plain that to show illegality in the order to report for work of national importance petitioner was obliged to demonstrate that the classification given him by the board of appeal was illegal, for that was the final classification. It obviously proves nothing to show, as petitioner sought to do (see Pet. 9, 20), that the I–A classification by the local board was illegal; that classification was rejected by the board of appeal and did not have any operative effect other than to furnish petitioner an opportunity to take his case before the board of appeal.

In his effort to show only that his local board was prejudiced against him and had arbitrarily classified him I–A, petitioner offered to prove that after he was classified I–A, he requested a personal appearance before the local board; that on December 7, 1942, he appeared before the board to "point out to you information in my file proving that I am entitled to a minister's classification of IV–D" (R. 33) and to present additional evidence (R. 34); and that he was briefly interrogated and then was told, "We have other registrants to consider tonight, and you can leave

that material here, and we will look it over later tonight" (R. 34). Petitioner further offered to prove (R. 34–37) that thereafter he separately interviewed the various members of the local board at their homes and places of business and that each indicated prejudice against him.

We agree with the circuit court of appeals (R. 198–200) that petitioner had the kind of hearing to which he was entitled. While the hearing may have been brief, in view of the press of other business before the local board, petioner admitted that he was afforded the opportunity to furnish any evidence which he desired to submit, and that he was assured that it would be considered by the local board. But, as we have argued, there is no occasion to consider whether the hearing was adequate, for petitioner's final classification rests upon the action of the board of appeal. Petitioner offered nothing even tending to show that he was deprived of an opportunity of placing all his evidence before that board or that the board of appeal acted otherwise than according to law in classifying him. Indeed, the summary of his selective service file, *supra*, pp. 6–7, shows that new evidence which he furnished the local board after he had taken his appeal was submitted to the appeal board and so far as appears was considered by it in classifying him IV-E. In these circumstances, we

think this aspect of the case is controlled by the decision of this Court in *Bowles* v. *United States*, 319 U. S. 33, in which the Court concluded that a registrant's asserted defense, in a criminal prosecuting for failing to report for induction, that his board of appeal had erroneously construed the act, was not a valid defense because that board's classification was superseded by the classification given the registrant by the Director of Selective Service. To the same effect, Mr. Justice Rutledge, concurring in *Falbo* v. *United States*, 320 U. S. 549, 555, said:

> * * * Petitioner claims the local board's order of classification was invalid because that board refused to classify petitioner as a minister on the basis of an antipathy to the religious sect of which he is a member. And, if the question were open, the record discloses that some evidence tendered to sustain this charge was excluded in the trial court. But petitioner has made no such charge concerning the action of the appeal board which reviewed and affirmed the local board's order. And there is nothing to show that the appeal board acted otherwise than according to law. If therefore the local board's order was invalid originally for the reason claimed, as to which I express no opinion, whatever defect may have existed was cured by the appeal board's action. * * *

3. Petitioner also offered to prove (R. 37–40) that after he was classified IV–E by the board of appeal, he talked to a government appeal agent and to various members of the local board concerning the possibility of reopening his classification, and that these persons indicated an unwillingness to change his classification. On the other hand, he also offered to prove that one member of the local board said the board would reopen his case "if new and sufficient evidence is presented" (R. 40). Petitioner offered to prove that thereafter, on January 15, 1944, he submitted "additional evidence proving my status as an ordained minister, and asked that my case be reopened" (R. 41). The selective service file, which is in evidence, shows that the local board reviewed the evidence submitted and concluded that it did not warrant reopening the classification (see *supra*, p. 7).

Section 626.2 of the Selective Service Regulations (*infra*, p. 29) provides, *inter alia*, that a local board "may," at any time prior to the issuance of an order to report for induction or for work of national importance, reopen the classification of a registrant upon his request, "if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification." Since the local board possessed jurisdiction to do this after the decision of the board of appeal, we do

not rely upon the *Bowles* decision in connection with this aspect of the case. We do urge, however, that the offer of proof, when viewed in the light of the facts shown by the selective service file, tendered nothing showing that the local board acted illegally under the Regulations in refusing to reopen the classification.

Assuming, as petitioner offered to prove, that some members of the local board, when interviewed at their homes individually, indicated a reluctance to change petitioner's classification, the fact remains that when petitioner's application to reopen his classification was submitted to the board together with his "additional evidence," the board considered it and declined to reopen, because the additional evidence did not warrant it. Petitioner tendered no evidence showing that the board acted otherwise than according to law in dealing with his application to reopen the classification. Moreover, whether a classification shall be reopened is a matter within the discretion of the local board; the board "may" reopen under circumstances prescribed by Section 626.2 of the regulations. In this case, the selective service file shows that the board, exercising the discretion lodged in it by Section 626.2, declined to reopen because the additional evidence did not warrant it. So far as appears, the board honestly exercised its discretion. That is all that the regulations require of it.

4. Petitioner urges (Pet. 11–12) as a reason for granting the writ that this case presents a question "similar" to that presented in *Gibson* v. *United States*, No. 221, this Term. We think that this case bears the same resemblance to the *Gibson* case as do the *Falbo, Smith,* and *Estep* cases, in that they all involve questions of judicial review in prosecutions for failure to perform a duty required by the Selective Training and Service Act. However, this case, like the *Falbo, Smith,* and *Estep* cases, does not present the basic question involved in the *Gibson* case, whether acceptance of a registrant at a Civilian Public Service Camp bars the defense of illegal classification in a prosecution for desertion. Petitioner did not report to the camp and was never accepted by the camp director; hence, it is plain that this case does not present that question.

CONCLUSION

We agree with petitioner that he was entitled to challenge the legality of his classification in the criminal trial. However, he was afforded ample opportunity to show any illegality inhering in his classification, and, as the circuit court of appeals held, nothing in the selective service file or in the other evidence which he adduced or offered supports his present claim that his final classification was illegal. In these circumstances, petitioner tendered no issue concerning his classi-

fication for determination by either the jury or the trial judge, and he was therefore properly convicted. Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

APRIL 1946.

APPENDIX

The Selective Training and Service Act of 1940, as amended, 54 Stat. 885 (50 U. S. C. App. 301 et seq.) provided, in part, as follows:

SEC. 5 * * *

(d) Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act.

* * * * * *

SEC. 10 (a) * * *

* * * * *

(2) * * * Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulation as the President may prescribed. * * *

* * * * * *

SEC. 11. Any person * * * who in any manner shall knowingly fail or neglect

to perform any duty required of him under or in execution of this Act, or rules or regulations made pursuant to this Act * * * shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, * * *.

The applicable selective service regulations in effect when petitioner was classified provided as follows:

622.44 *Class IV–D: Minister of religion or divinity student.*—(a) In Class IV–D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Service Training and Service Act (September 16, 1940).

* * * * *

(c) A "duly ordained minister of religion" is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties. (6 F. R. 6607.)

* * * * *

622.51 *Class IV–E: Conscientious objector available for, assigned to, or released from work of national importance.*—(a) In Class IV–E shall be placed every registrant who would have been classified in

Class I–A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to both combatant and noncombatant military service. (7 F. R. 6517.)

(b) Upon being advised by the Director of Selective Service that a registrant who was inducted into the land or naval forces for military service will be discharged because of conscientious objections which make him unadaptable to military service, the local board shall change such registrant's classification and place him in Class IV–E. The Director of Selective Service shall assign such registrant to work of national importance under civilian direction.

* * * * * *

626.2. *When registrant's classification may be reopened and considered anew.*—(a) The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any interested party in a case involving occupational deferrment, if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order

to Report for Induction (Form 150) unless the local board first specifically finds that there has been a change in the registrant's status resulting from circumstances over which the registrant has no control.

(b) At any time before the induction of a registrant, the local board shall reopen and consider anew such registrant's classification upon the written request of the State Director of Selective Service or the Director of Selective Service. (7 F. R. 110, 653, 2089.)

629.1 *Who will be examined.*—(a) Every registrant, before he is ordered to report for induction, shall be given a preinduction physical examination under the provisions of this part unless (1) he signs a Request for Immediate Induction (Form 219) or (2) he is a deliquent, * * * (9 F. R. 440.)

629.2 *Ordered to report for preinduction physical examination.*—(a) In accordance with instructions of the Director of Selective Service, the State Director of Selective Service will issue to each local board a Call—Preinduction Physical Examination (Form 224)—specifying thereon the number of registrants to be delivered for preinduction physical examination and the time and place fixed for such delivery.

(b) The local board shall mail an Order to Report—Preinduction Physical Examination (Form 215) to a sufficient number of registrants who have been classified in Class I–A or Class I–A–O under the provisions of section 623.21 to fill each Call—Preinduction Physical Examination (Form 224) which it receives. In filling such calls, the local board, as far as practicable, shall first select volunteers, then nonfathers, and

finally fathers, and within each group shall make such selections in sequence of order numbers without regard to whether the registrant has requested or will request a personal appearance before the local board and without regard to whether an appeal has been or will be taken.

(c) The local board shall also mail an Order to Report—Preinduction Physical Examination (Form 215) to each registrant classified in Class IV–E when his order number is reached (without regard to whether he has requested or will request a personal appearance before the local board and without regard to whether an appeal has been or will be taken) in the process of ordering Class I–A and Class I–A–O registrants to report for preinduction physical examination under the provisions of paragraph (b) of this section.

(d) The local board may also mail an Order to Report—Preinduction Physical Examination (Form 215) to any registrant (1) who is classified in a class other than Class I–A, Class I–A–O, or Class IV–E, if it determines that his induction will shortly occur, or (2) when directed to do so by the Director of Selective Service or the State Director of Selective Service.

(e) At the time the local board prepares the original Order to Report—Preinduction Physical Examination (Form 215), it shall make a copy of such form and shall file the copy in the registrant's Cover Sheet (Form 53). (9 F. R. 440, 1415.)

* * * * *

629.32 *Mailing Certificate of Fitness to registrant accepted or rejected.*—When a Certificate of Fitness (Form 218) indicates that a registrant has been accepted for the

Army or the Navy or that a registrant has been rejected, the local board shall immediately mail the original of such certificate to the registrant and shall record the date of mailing of such Certificate of Fitness (Form 218) on the registrant's Selective Service Questionnaire (Form 40). (9 F. R. 1415.)

* * * * *

652.13 *Jurisdiction of local board while registrant is engaged in work of national importance.*—A registrant in Class IV–E who has reported for work of national importance pursuant to this part shall be retained in Class IV–E by the local board. Such registrant after he has left the local board in accordance with section 652.12 for work of national importance under civilian direction is under the jurisdiction of the camp to which he is assigned. The local board shall take no further steps with regard to such registrant without instructions from the Director of Selective Service but should report any information to the Director of Selective Service which might affect the registrant's status. (7 F. R. 111.)

* * * * *

653.11 *Reception at camps.*—(a) When the assignee has reported to camp, the camp director shall complete the Order to Report for Work of National Importance (Form 50). Four copies of the completed Order to Report for Work of National Importance (Form 50) shall be sent to the Director of Selective Service; one copy will be retained by the camp director. The Director of Selective Service will forward two copies of the Order to Report for Work of

National Importance (Form 50) to the appropriate State Director of Selective Service, who will retain one copy for his files and mail the other copy to the local board for filing in the registrant's Cover Sheet (Form 53).

(b) As soon as possible after the assignee has reported to camp, the camp physician shall give him a physical examination and shall determine whether there has been any change in the assignee's physical or mental condition since his preinduction physical examination. If a camp physician is not available, the camp director, to the extent that he is capable of doing so, shall, by observing and questioning the assignee, make such determination. The camp physician or the camp director, as the case may be, shall, on the bottom of page 4 of the Original and First Copy of the Report of Physical Examination and Induction (Form 221), make a record of such determination.

(c) Irrespective of the determination which is made as a result of the examination of an assignee made under the provisions of paragraph (b) of this section, the camp director shall, on the bottom of page 4 of the Original and First Copy of the Report of Physical Examination and Induction (Form 221), place a statement that a registrant is accepted for work of national importance at the civilian public service camp to which the registrant has been assigned. The statement shall specify the date and place of such acceptance and shall be signed by the camp director who shall retain the First Copy of the Report of Physical Examination and Induc-

tion (Form 221) and shall forward the Original to the Director of Selective Service.

(d) Upon receiving notice that a registrant has been accepted for work of national importance, the local board shall not change his classification but shall note the fact of his acceptance for such work in the Classification Record (Form 100). (9 F. R. 1416, 6207.)

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No. 86

In the Supreme Court of the United States

OCTOBER TERM, 1946

GEORGE WILLIAM DODEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	2
Summary of argument	10
Argument:	
The judgment of the circuit court of appeals should be reversed and the case remanded to the district court for such further proceedings as are proper	11
Conclusion	17
Appendix	18

CITATIONS

Cases:	
Estep v. *United States*, Nos. 66 and 292, decided February 4, 1946	11, 15, 17
Falbo v. *United States*, 320 U. S. 549	10, 11, 12, 13, 14, 15
Gibson v. *United States*, No. 23, this Term	2, 13, 15, 16
Statute and Regulations:	
Selective Training and Service Act of 1940, as amended, 54 Stat. 885 (50 U. S. C. App. 301, et seq.)	2
Selective Service Regulations:	
622.44	18
622.51	18
626.2	19
627.12	6
629.1	12, 20
629.2	12, 20
629.32	12, 21
652.41	13
652.13	13, 22
653.11	13, 22

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OPINION BELOW

The opinion of the circuit court of appeals (R. 189–200) is reported at 154 F. 2d 637.

JURISDICTION

The judgment of the circuit court of appeals was entered March 18, 1946 (R. 189). The petition for a writ of certiorari was filed April 12, 1946, and was granted May 6, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether in a prosecution for failure to report for work of national importance petitioner should have been permitted to defend on the ground that he was wrongfully denied classification as a minister of religion.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Selective Training and Service Act are set forth in Appendix A, pp. 57–61, of the Brief for the United States on Reargument in *Gibson* v. *United States,* No. 23, this Term. The applicable provisions of the Selective Service Regulations are set forth in the Appendix hereto, *infra,* pp. 18–23.

STATEMENT

Petitioner was indicted (R. 2–3) in the United States District Court for the Northern District of Ohio in one count charging a violation of Section 11 of the Selective Training and Service Act of 1940. The indictment alleged that pursuant to petitioner's claim that he was a conscientious objector, he was classified in IV–E and ordered to report on April 21, 1944, for work of national importance, and that he knowingly failed to do so. He was convicted after a jury trial (R. 112) and was sentenced to imprisonment for five years (R. 130–131). Upon appeal to the Circuit Court of Appeals for the Sixth Circuit, the judgment was affirmed (R. 139).

It was undisputed at the trial that petitioner was finally classified in IV-E by his board of appeal; that on February 21, 1944, he reported for a preinduction physical examination and was found acceptable for service; that the local board thereafter ordered petitioner to report on April 21, 1944, for work of national importance; and that petitioner willfully refused to comply with the order of his local board (R. 13–15, 51, 56–57). The sole disputed issue concerned the legality of the administrative proceedings in which petitioner's claim to classification as a minister of religion in the Jehovah's Witnesses sect was rejected. The relevant facts, as reflected by petitioner's selective service file, which was received in evidence (R. 15, 17),[1] may be summarized as follows:

Having registered on June 30, 1942, with Local Board No. 2, Wayne County, Ohio (R. 13, 156), petitioner, on September 21, 1942, filed his selective service questionnaire (R. 146–150), in which he stated that he was 20 years of age; that he had a high school education; that since January 1941,

[1] While the entire selective service file was received in evidence, the printed record before the Court includes only some of the documents in that file. In order that documents in the file which we believe are relevant and which are not printed in the record may be considered by the Court, we have caused the clerk of the circuit court of appeals to certify to this Court the same photostatic copies of all the documents in the file which were before the court below (see R. 144–145).

he had been affiliated with the Watchtower Bible and Tract Society; that he was an ordained minister of religion with "1¾ years experience in this kind of work"; that he was also a farmer from 1938 to 1942; that he was conscientiously opposed to all war; and that he believed he was entitled to a IV–D classification, as a minister of religion.

On September 26, 1942, petitioner filed a special form for conscientious objectors (R. 150–154), in which he stated that he was opposed by reason of religious training and belief to both combatant and noncombatant military service; that he believed in the use of "force in the fight for righteousness" but that "if one is going to be a Christian he must not take part in the affairs of this world because the world is against Christ's Kingdom"; that since January 1941 he gave expression to his religious beliefs by "witnessing at every opportunity from house to house and on the street and elsewhere"; and that the Jehovah's Witnesses organization has "No creed or official statements—each person must make his own choice and take his own stand for the New World."

Petitioner also filed with the local board an affidavit (R. 160–162) in which he said that he had been a member of Jehovah's Witnesses since July 1941; that since May 6, 1942, he had been a pioneer in the sect, which occupied "the greater amount of my time"; that "the duties that I per-

form as a pioneer is to go from house to house and preach the gospel of the Kingdom and declare the day of vengeance of Jehovah, to comfort all that mourn, place literature and assist interested parties in gaining knowledge of the truth"; and that he had been commissioned by the Watch Tower Bible and Tract Society "to preach the gospel of God's Kingdom." Petitioner's claim was supported by affidavits of other persons and by documents purporting to show that he was an ordained minister of religion (R. 157–160, 163–165).

On October 26, 1942, the local board by a vote of 4 to 0 classified petitioner I–A, as available for military service, with a notation in its minutes, "Selling Jehovah Witness Literature at Public Square" (R. 149). On November 25, 1942, the local board reaffirmed the I–A classification, with the notation in its minutes "not an ordained minister as per public recognition" (R. 150). Petitioner then requested a personal appearance before the local board (R. 167–168) and the minutes of the board reveal that on December 7, 1942, a hearing was had, and that after reconsidering the case, the board again reaffirmed the I–A classification (R. 150). Petitioner's request for a second hearing was denied (see R. 169), and on December 17, 1942, he appealed to the board of appeal (R. 149). As permitted by Selective

Service Regulation 627.12,[2] petitioner included in his notice of appeal (R. 170–171) a summary of the facts concerning his hearing before the local board on December 7, 1942, and his efforts to secure a second hearing; he urged that he be classified IV–D because "all the facts in my file and case show that I have been a regular minister of religion since May 7, 1942, prior to my registration of June 30, 1942," and because the local board acted capriciously and with prejudice in classifying him I–A.

While the case was pending on appeal before the board of appeal, petitioner submitted to the local board information, including a document issued by the Watchtower Society (R. 172), to the effect that on January 21, 1943, he became "the head of the entire Wooster [Ohio] Company [of Jehovah's Witnesses], that is head of a congregation," and requested that the local board reconsider his classification (R. 173). It appears from correspondence dated May 7, 10, and 12, 1943 (see fn. 1, *supra*, p. 3), that all of this mate-

[2] This section provides:

"The person appealing may attach to his notice of appeal or to the Selective Service Questionnaire (Form 40) a statement specifying the respects in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file."

rial was forwarded to the board of appeal for consideration by it in classifying petitioner. On June 4, 1943, the board of appeal classified petitioner in IV–E.

More than seven months later, on January 15, 1944, petitioner requested the local board to reopen his classification. In a letter to the board (R. 179–180) petitioner restated his claim to classification as a minister and he submitted "additional evidence" which "has been called to your attention before when I personally talked to each of you, except Dr. Adair" (R. 179). The "additional evidence" consisted of a minister's license (R. 176) issued by the county probate court; a newspaper clipping reciting that he had recently officiated at a marriage (R. 180); a statement signed by numerous persons stating that petitioner was the minister of their congregation (R. 174–176); and photographs of the meeting place of the congregation and of petitioner apparently presiding at a meeting of the congregation (R. 177–178). It appears from a letter dated February 10, 1944, contained in the selective service file, that the local board reviewed the information submitted and concluded that it did not warrant reopening the classification.

At petitioner's request[1] his selective service file was sent to National Headquarters of the Se-

[1] See his letter, in the selective service file, of February 18, 1944.

lective Service System, but it appears that the Director of Selective Service declined to take an appeal to the President."

It was at this juncture of the administrative proceedings that petitioner was physically examined and found acceptable for service and was ordered to report for work of national importance, in lieu of military service (*supra*, p. 3).

In addition to the documentary evidence summarized above, the trial court permitted petitioner to adduce *de novo* evidence calculated to show that as of the time of the trial he was a minister of religion. Mrs. Sauer testified that the Jehovah's Witnesses organization in Wooster, Ohio, had no membership as such, but that she was affiliated with the Jehovah's Witnesses (R. 23); and that she had signed a document stating that she recognized petitioner as a minister of religion who preaches and teaches the principles of the Watchtower Bible and Tract Society (R. 22, 158). On cross examination she testified that she was a Jehovah's Witness, but that she was not a minister of religion (R. 25).

Petitioner testified on direct examination that at the time that he registered under the Selective Training and Service Act and thereafter, he "was a duly ordained minister of the Gospel, preaching the Gospel of the Kingdom only" (R. 26). He

[1] See the letter, in the file, of August 9, 1943, from State Headquarters to the local board.

said that he relied upon the Scriptures for his ordination and that his ministerial status commenced in January 1941, when he received an identification card from a representative of the Watchtower Society which, as he testified, stated that anyone possessing such a card is a minister of religion (R. 28–29). Petitioner testified that after receiving the card he "began to preach the Gospel of the Kingdom in accordance with the regulations stated by the Watchtower Society" by preaching "the Gospel of the Kingdom from house to house, in territory that I am definitely assigned" (R. 29); "I call on each individual in that territory, and present to them the Message of the Kingdom. Those who are interested, a call is made at a later date, and a Bible study is arranged in their home" (R. 29). Petitioner said that in addition he conducts funeral and baptismal services, delivers sermons, looks after the congregations, sees that the bills of the church are properly taken care of, and that someone takes care of cleaning the church building (R. 30).

On cross-examination petitioner testified that 102 persons are associated with the Jehovah's Witnesses in Wooster and that each possesses an identification card which is the same as his, and that each is therefore a minister (R. 52–54). Thereafter, on redirect examination, he explained that these persons are not ministers in the same sense that he is (R. 57, 60); that he is the "man,

aging agent" for the Watchtower organization in Wooster (R. 63).

In submitting the case to the jury, the trial judge instructed them that the Selective Training and Service Act provides that the decisions of the local boards shall be final, except where an appeal is taken (R. 105). The jury was further instructed (R. 107) that they should find petitioner guilty if they found that he was a male person who had registered under the Act and who knowingly failed to report for work of national importance in accordance with an order of his local board (see also R. 108–109, 110).

SUMMARY OF ARGUMENT

When *Falbo* v. *United States*, 320 U. S. 549, was decided the applicable Selective Service Regulations permitted a camp director to reject a selectee who was found upon examination at the camp to be unfit for service. For this reason the Court held that a selectee had not exhausted his administrative remedies until he was accepted at the camp. Since then the procedure has been amended. Since February 2, 1944, a selectee is given a pre-induction physical examination and is issued a certificate of fitness if he is qualified for service under the Act. The camp director possesses no authority to reject a selectee who is assigned to his camp. For these reasons we think that a selectee's administrative remedies are now exhausted when he receives a certificate of fitness and thereafter is ordered to

report for work of national importance. Petitioner received a certificate of fitness on February 21, 1944, and he was ordered to report on April 21, 1944, for work of national importance. Consequently, we think, he exhausted his administrative remedies and should have been permitted to defend on the ground that he was illegally classified, in accordance with the standard prescribed in *Estep* v. *United States*, Nos. 66 and 292, decided February 4, 1946. Since this defense was not passed on in the trial court, we respectfully submit that the judgment of the circuit court of appeals should be reversed and that the case should be remanded to the district court for such further proceedings as are proper.

ARGUMENT

THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS SHOULD BE REVERSED AND THE CASE REMANDED TO THE DISTRICT COURT FOR SUCH FURTHER PROCEEDINGS AS ARE PROPER

In *Falbo* v. *United States*, 320 U. S. 549, this Court held that a registrant who failed to report to a Civilian Public Service Camp for work of national importance, as ordered by his local board, thereby failed to exhaust his administrative remedies and therefore was not entitled to defend on the ground that he was illegally classified. The rationale of the decision, as we now understand it, was that at the time of Falbo's violation he had not yet been finally accepted for service, for there remained a possibility that, if he had reported to the camp for

work of national importance, he might have been rejected by the camp director.

Like Falbo, petitioner was classified IV–E, he was assigned to a Civilian Public Service camp, he was ordered to report for work of national importance at the camp and he failed to report. Recognizing this, the circuit court of appeals concluded (R. 194) that petitioner had not exhausted his administrative remedies by reporting at the camp to which he was assigned and that the trial court therefore properly denied petitioner the opportunity to challenge the classification as a defense to the indictment.

In our view, the circuit court of appeals improperly assimilated this case to the *Falbo* case. As we point out in our brief in the *Gibson* case (pp. 11–14), under the selective service procedure in effect when petitioner underwent the process, after a registrant is classified IV–E he is ordered to report for a pre-induction physical examination (Reg. 629.1–629.2). If he is found to be fit for work of national importance he is issued a certificate of fitness which constitutes the final administrative determination of his acceptability (Reg. 629.32).[5] Thereafter, he is assigned to a Civilian Public Service Camp by the Director of Selective

[5] Registrants classified for military service are given a second physical examination at the induction station after they have responded to the induction order. Hence, in their cases their administrative remedies have not been exhausted until they are found acceptable at the induction station.

Service and the local board thereupon issues its order to report for work of national importance (Reg. 652.11). As soon as the registrant leaves his local board en route to the camp he is "under the jurisdiction of the camp to which he is assigned" (Reg. 652.13). Every registrant who reports to the camp to which he is assigned must be accepted by the camp director; since February 2, 1944, the camp director has possessed no authority to reject a registrant (Reg. 653.11).[6]

It is in the latter respect that the procedure differs from that which prevailed at the time of Falbo's case. As we indicate in our brief in the *Gibson* case, at the time of the *Falbo* case a reg-

[6] Section 653.11, as it existed at the time of *Falbo's* case, permitted the camp director to reject a selectee for physical reasons. On February 2, 1944, Section 653.11 was amended to reflect the new selective service procedure by which all selectees are given a pre-induction physical examination and are issued a certificate of fitness if they are found acceptable for service. As amended, Section 653.11 omitted the prior reference to the power of the camp director to reject a selectee; instead, it provided that the director "shall" signify his acceptance of the registrant by noting that fact on D. S. S. Form 221. This provision was in effect on April 21, 1944, when petitioner was required to report for work of national importance. On June 7, 1944, Section 653.11 was further amended to state affirmatively that the registrant should be accepted by the camp director irrespective of the result of the physical examination at the camp. The history of this provision of the regulations and the reasons for the various amendments are fully summarized in a letter from the Selective Service System to the Attorney General, which is set forth in full in Appendix C, pp. 75–80, of the Government's brief in the *Gibson* case.

istrant classified IV–E was given a physical examination before being ordered to report to the camp and upon reporting to the camp he was examined again. Where the circumstances warranted it, the camp director was free to reject the registrant for work of national importance, and as the Court noted in the *Falbo* opinion (320 U. S. at p. 553) as of October 15, 1943, 610 of the 8,000 selectees who had reported for civilian work of national importance had been so rejected. Now, however, a selectee may not be rejected at the camp. Accordingly, it is plain that at the time of the *Falbo* case the final determination of acceptability occurred when the registrant was accepted by the camp director. Under the revised procedure applicable to this case, the final determination of acceptability is made when the registrant undergoes a preinduction physical examination. The certificate of fitness is notice to him that he is acceptable for work of national importance. Since the camp director may not reject the registrant, we think it follows that the administrative remedies are exhausted when the registrant's final acceptability is determined. It is true that final acceptance is not made until the registrant reaches the camp, but in view of the fact that acceptance is a foregone conclusion for every registrant who receives a certificate of fitness and is ordered to report to the camp, there would seem to be no logical basis for insisting that the registrant must report to the camp and be

finally accepted by the camp director in order to exhaust his administrative remedies.

The facts of the case show that on February 21, 1944, petitioner reported for his preinduction physical examination and was issued a certificate of fitness (R. 51). In these circumstances, if our view of the selective service procedure is correct, petitioner's acceptability had been determined and he had exhausted his administrative remedies. Accordingly, we think that the court below incorrectly determined that petitioner was not entitled to defend on the ground that he was illegally classified.[1] Since petitioner's defense was not entertained in the district court,[2] we think it would be appropriate for this Court to reverse the judgment of the circuit court of appeals and to remand the case to the district court for a new trial in which petitioner will be permitted to challenge his selective service classification to the extent permitted by this Court's decision in the *Estep* case.

Contrary to the position which we have taken in Part III of the Argument in the *Gibson* case, we do not urge in this case that if the Court decides that the defense was open to petitioner the Court should consider whether the evidence

[1] The circuit court of appeals apparently was not aware of the fact that the selective service procedure had been amended subsequent to the *Falbo* decision.

[2] Some of petitioner's tendered evidence was admitted, but the validity of the defense relied upon by petitioner was not considered in the trial court (see *supra*, p. 10).

which he adduced or offered in the trial court demonstrated that he was not illegally classified. We agree with petitioner that if the defense is open to him the judgment below should be reversed and the case should be remanded for a new trial.

The defense tendered in the *Gibson* case is so plainly without merit that it is not likely that any court would hold that there is no foundation in fact for the rejection of his claim to ministerial classification; for that reason it is in the interest of Gibson, as well as the Government, that this Court now dispose of the question. On the other hand, in view of the evidence before the boards showing that petitioner was the leader of the Wooster unit of Jehovah's Witnesses (*supra*, pp. 6–7), there seems to lurk in this case a nice question concerning the factual foundation upon which the board's classification rests, a question which was not stressed in the courts below. If the defense of illegal classification is open to petitioner and if this Court remands the case for a new trial, the Government will be afforded the opportunity to determine whether to proceed further with the litigation in view of the new issue in the case.[9] If a new trial is had petitioner will have an op-

[9] Whether the Department would proceed with a new trial would depend not upon whether it determined that there is some foundation in fact for the rejection of petitioner's claim, but rather upon the Selective Service System's advice to the Department as to the correctness of petitioner's classification.

portunity to present squarely the question whether there is any foundation in the facts before the selective service boards for rejecting his claim to classification as a minister, in accordance with the standard of judicial review set forth in the *Estep* case.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the circuit court of appeals should be reversed and that the case should be remanded to the district court for such further proceedings as are proper.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

SEPTEMBER 1946.

APPENDIX

The applicable selective service regulations in effect when petitioner was classified provided as follows:

> 622.44 *Class IV–D: Minister of religion or divinity student.*—(a) In Class IV–D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).
>
> * * * * *
>
> (c) A "duly ordained minister of religion" is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties. (6 F. R. 6607.)
>
> * * * * *
>
> 622.51 *Class IV–E: Conscientious objector available for, assigned to, or released from work of national importance.*—(a) In Class IV–E shall be placed every registrant who would have been classified in Class I–A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to both combatant and noncombatant military service. (7 F. R. 6517.)

(b) Upon being advised by the Director of Selective Service that a registrant who was inducted into the land or naval forces for military service will be discharged because of conscientious objections which make him unadaptable to military service, the local board shall change such registrant's classification and place him in Class IV–E. The Director of Selective Service shall assign such registrant to work of national importance under civilian direction.

* * * * *

626.2 *When registrant's classification may be reopened and considered anew.*— (a) The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any interested party in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (Form 150) unless the local board first specifically finds that there has been a change in the registrant's status resulting from circumstances over which the registrant has no control.

(b) At any time before the induction of a registrant, the local board shall reopen and consider anew such registrant's classification upon the written request of the State Director of Selective Service or the Director of Selective Service. (7 F. R. 110, 653, 2089.)

629.1 *Who will be examined.*—(a) Every registrant, before he is ordered to report for induction, shall be given a preinduction physical examination under the provisions of this part unless (1) he signs a Request for Immediate Induction (Form 219) or (2) he is a delinquent, * * * (9 F. R. 440.)

* * * * *

629.2 *Order to report for preinduction physical examination.*—(a) In accordance with instructions of the Director of Selective Service, the State Director of Selective Service will issue to each local board a Call—Preinduction Physical Examination (Form 224), specifying thereon the number of registrants to be delivered for preinduction physical examination and the time and place fixed for such delivery.

(b) The local board shall mail an Order to Report—Preinduction Physical Examination (Form 215) to a sufficient number of registrants who have been classified in Class I–A or Class I–A–O under the provisions of section 623.21 to fill each Call—Preinduction Physical Examination (Form 224) which it receives. In filling such calls, the local board, as far as practicable, shall first select volunteers, then nonfathers, and finally fathers, and within each group shall make such selections in sequence of order numbers without regard to whether the registrant has requested or will request a personal appearance be-

fore the local board and without regard to whether an appeal has been or will be taken.

(c) The local board shall also mail an Order to Report—Preinduction Physical Examination (Form 215) to each registrant classified in Class IV–E when his order number is reached (without regard to whether he has requested or will request a personal appearance before the local board and without regard to whether an appeal has been or will be taken) in the process of ordering Class I–A and Class I–A–O registrants to report for preinduction physical examination under the provisions of paragraph (b) of this section.

(d) The local board may also mail an Order to Report—Preinduction Physical Examination (Form 215) to any registrant (1) who is classified in a class other than Class I–A, Class I–A–O, or Class IV–E, if it determines that his induction will shortly occur, or (2) when directed to do so by the Director of Selective Service or the State Director of Selective Service.

(e) At the time the local board prepares the original Order to Report—Preinduction Physical Examination (Form 215), it shall make a copy of such form and shall file the copy in the registrant's Cover Sheet (Form 53). (9 F. R. 440, 1415.)

* * * * * *

§29.32 *Mailing Certificate of Fitness to registrant accepted or rejected.*—When a Certificate of Fitness (Form 218) indicates that a registrant has been accepted for the Army or the Navy or that a registrant has been rejected, the local board shall immediately mail the original of such certificate to the registrant and shall record the date of mailing of such Certificate of

Fitness (Form 218) on the registrant's Selective Service Questionnaire (Form 40). (9 F. R. 1415.)

* * * * * *

652.13 *Jurisdiction of local board while registrant is engaged in work of national importance.*—A registrant in Class IV–E who has reported for work of national importance pursuant to this part shall be retained in Class IV–E by the local board. Such registrant after he has left the local board in accordance with section 652.12 for work of national importance under civilian direction is under the jurisdiction of the camp to which he is assigned. The local board shall take no further steps with regard to such registrant without instructions from the Director of Selective Service, but should report any information to the Director of Selective Service which might affect the registrant's status. (7 F. R. 111.)

* * * * * *

653.11 *Reception at camps.*—(a) When the assignee has reported to camp, the camp director shall complete the Order to Report for Work of National Importance (Form 50). Four copies of the completed Order to Report for Work of National Importance (Form 50) shall be sent to the Director of Selective Service; one copy will be retained by the camp director. The Director of Selective Service will forward two copies of the Order to Report for Work of National Importance (Form 50) to the appropriate State Director of Selective Service, who will retain one copy for his files and mail the other copy to the local board for filing in the registrant's Cover Sheet (Form 53).

(b) The camp director shall, on the bottom of page 4 of the Original and First Copy of the Report of Physical Examination and Induction (Form 221), place a statement that a registrant is accepted for work of national importance at the civilian public service camp to which the registrant has been assigned. The statement shall specify the date and place of such acceptance and shall be signed by the camp director who shall retain the First Copy of the Report of Physical Examination and Induction (Form 221) and shall forward the Original to the Director of Selective Service.

(c) Upon receiving notice that a registrant has been accepted for work of national importance, the local board shall not change his classification but shall note the fact of his acceptance for such work in the Classification Record (Form 100).

(d) In the event an assignee does not report to the camp at the time prescribed in his Order to Report for Work of National Importance (Form 50) or pursuant to the instructions of the local board, the camp director will report such fact to the Director of Selective Service. (9 F. R. 1416.)

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

No. 1103

GEORGE WILLIAM DODEZ, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPLICATION

for Bail Pending Disposition of Writ of Certiorari

TO THE SUPREME COURT OF THE UNITED STATES:

Now comes the petitioner, George William Dodez, and presents for consideration his application for bail pending a disposition of his case upon a writ of certiorari, if, as and when such writ is granted by this court. As ground therefor he states that this case "involves a substantial question which should be determined by the appellate court." (Rule 48 (a) (2), Rules of Criminal Procedure)

Application for bail pending appeal was made to the district court and was denied. (See record, page 121) On April 15, 1946, the court of appeals refused the petition

for bail. A copy of the order is attached and marked Appendix A. The reason that application for bail was not made to the court of appeals promptly after denial by the district court was because of the adamant and uniform holding of federal appellate courts that a situation of the kind presented upon the petition in this case was disposed of by the rule in *Falbo* v. *United States*, 320 U. S. 549, which was, as petitioner contends, erroneous. For this reason, upon denial of bail by the district court petitioner elected to enter upon service of the sentence imposed because he would receive no credit for time spent in the jail at Cleveland, Ohio, where he would have been held in custody pending appeal had he refused to elect to serve his time. Now that this court has issued its decision in *Estep* v. *United States*, 66 S. Ct. 423, and its orders about reargument and bail in *Gibson* v. *United States*, No. 221 October Term 1945, the petitioner abrogates his election to serve the sentence and renews his desire for bail until the validity of the judgment of conviction is determined by this court.

The question presented is correlative to that involved in *Gibson* v. *United States*, No. 221 October Term 1945, which arises under the same Act and the same Regulations as are to be considered in this case. Since bail was granted in the *Gibson* case, it should be allowed in this case. See the petition for writ of certiorari in this case, pages 11-12, 13-21, for a discussion of the substantiality of the question presented.

The reason petitioner desires bail is plain. It will restore his liberty which was taken away from him by the execution of sentence. If the judgment below is reversed and the case remanded for a new trial on which new trial he is again convicted, he will be required to serve another sentence, which will be two sentences served for one offense. If upon another trial he is acquitted, then his service of this sentence or any part thereof will be unjust. It is funda-

mental that to avoid injustice bail should be allowed where a substantial question is involved on an appeal. There is no way of restitution of the service of an illegal sentence in a criminal action. Therefore every reason inheres to give to a defendant contesting a judgment on appeal in a criminal case the same right that a defendant contesting a money judgment in a civil case has upon appeal, which is freedom from obligation to satisfy the judgment until the appeal is determined. Consequently it is time enough for a citizen to pay a judgment rendered against him when it becomes a final judgment upon appeal, especially where his adversary may be protected against loss by bond.

Wherefore petitioner prays that in event the writ of certiorari is granted he be admitted to bail pending the consideration of his case and the decision of this court.

HAYDEN C. COVINGTON
Counsel for Petitioner

APPENDIX A

No. 9947

UNITED STATES CIRCUIT COURT OF APPEALS
SIXTH CIRCUIT

GEORGE WILLIAM DODEZ, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Before: Hicks, Allen and Martin, JJ.

ORDER

The application for bail in this court on April 11, 1946, is denied.

APPROVED FOR ENTRY:

Xenophon Hicks
Circuit Judge

April 16, 1946.